# GOVERNMENT FOR THE PEOPLE

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# PREFACE

This book is an effort to state in a thoroughly clear way, for that growing portion of the general public who are interested in the mechanism of government, some of the obvious truths with regard to it. It makes no claim to erudite profundity, which is always stupid and generally misleading. It is not markedly original. Originality in the interpretation of the phenomena of government is usually purchased at the expense of sound reasoning. This book is merely a sane criticism of our institutions. It does not murder truth in the name of cleverness.

The material embodied in the succeeding chapters is the result of a long process of reflection and modification. In the fall of 1910, the writer delivered, under the auspices of the Extension Department of the University of California, a series of lectures on contemporary political questions. These lectures, frequently repeated, were finally crystallized into this book. During this long period of gestation, what were originally separate essays have

grown into a single constructive criticism of our government.

The bibliographies appended to each chapter are not intended to be exhaustive, but merely to suggest some of the more available works and articles for use by those who wish to pursue the subject further.

I wish to make acknowledgment of the constant encouragement which has been afforded me throughout the various stages of my work by Professor David P. Barrows, Head of the Political Science Department and Dean of the Faculties of the University of California. Although differing with me materially in some of my conclusions, he has always urged me to a sincere expression of my own views. Mr. J. H. Quire has assisted me in the correction of proofs, and Mr. J. R. Douglas, Teaching Fellow in Political Science, has given untiring service in the preparation of the book for the press. My greatest helper has been my wife, who at every stage has been ready with pointed criticism.

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## CHAPTER I

### THE CITIZEN AND THE STATE

Much learning and ingenuity has been applied to defining the term "state," with the net result that we may safely conclude that no inclusive definition is possible. It means one thing to one set of men, to another, another. For our present purpose it means simply society, politically organized. It is more fundamental than government. Possessing a personality apart from its machinery and agents, it alone is permanent among changing forms. Give it a "local habitation and a name" and we have that "Country" for which patriots die.

The one great duty that man owes to the state is obedience. In the most primitive forms of society of which we have record, long before the appearance of government in the ordinary sense of that term, there were certain

acts which were generally recognized as inimical to the common good and others as essential to its preservation. The custom of the people forbade the one and enjoined the other. To break these simple folk-ways meant exclusion from the tribe, within which there could be no place for one who imperiled its safety by disobedience of its collective judgment. We may leave the origins of these primitive customs for others to conjecture. It is enough for our purposes that they existed and were obeyed. Gradually it was found desirable to have some determination of their scope and some formal judgment when they were broken. Gathered about the council fire the clans listened to the solemn pronouncement of the "law-speaker" and rendered their verdict of guilt or innocence. Later generations have devised elaborate machinery for the authentic declaration of the law and its interpretation and enforcement, but the obligation of obedience has never abated. A multitude of commands are issued instead of a few, but to the whole category, from dying in battle to paying one's taxes, obedience is due.

Obedience is an especially imperative duty under the circumstances of modern society. Such society, indeed, would be impossible without it. Man cannot live in that proximity to man

which the conditions of our economic life have ordained, without rules, well observed. Just as on the cinder-path we confine each sprinter to a tape-marked lane so that none may jostle another, so we must have jostle-bars in life. They may be defined by statutes enforced by policemen; they may be the result of the simple consensus of society, depending for their sanction upon public opinion only; or, as is commonly the case, they may be the product of both these methods. The process of enactment and enforcement has of itself no significance. It makes little difference whether you refrain from stealing from fear of jail, the cold looks of your neighbors, or the rigors of your own conscience. In any event you obey the social will. Even our friends the anarchists, with their enchanting pictures of life without law, unconsciously premise absolute obedience to the more fundamental customs of society. Obedience to law in its broadest sense is the basis on which society is built. Without it the mutual confidence which makes life among men tolerable could not exist. By virtue of it we lie down at night confident in the safety of our lives and possessions. Without it we would go back to naked savagery and the continual task of defending a luckless existence. Without law there can be no confi-

dence; without confidence, no peace or security; without security, no possessions; without possessions, no civilization.

We must note that, whereas law may be defined by statute, law is not in reality made by statute. The vital principle of law is the social will, and it is only when the statute records it accurately that the statute is in truth a law. Our processes of law-making are at best imperfect. Motives many and various swerve legislatures from the strict performance of their representative function. Deliberate and inadvertent errors help to crowd the statute books with lawless enactments. It should excite no remark that such acts are disobeyed. They are our peculiar American disgrace. We frequently cry "Amen!" to those of our foreign critics who describe us as a lawless people. As a matter of fact we are not lawless; only perverse and insincere. We permit our legislators to enact statutes which we either do not want at all or at least not sufficiently to trouble ourselves with their enforcement. Through positive dislike or passive indifference we tolerate their constant infraction. The worst consequence is that the fact of a difference between the legal standard and the real social will is a veritable Archimedean fulcrum of graft.

Just as in many small matters our so-called "law-makers" fall something short of the mark, so the whole form of government may fundamentally fail to express the real social will. Under normal conditions it is our duty to obey the behests of constituted authority even when they measurably depart from our standard of right. It is not reasonable to condemn a worthy institution because of its incidental failures. There come times, however, when the will of society and that of its usual agent come into conflict so violently that the individual must choose between them. At such a time the higher obligation attaches to substance rather than to form. The eighteenth century political philosophers called this duty to choose the better part "the right of revolution." We no longer accept their "compact" theory of government by which it became man's duty to resist the invasion of those fundamental rights that the original social contract had reserved to him. We arrive, however, at the same practical result by holding that the right to command obedience inheres not in any form of government but in the state as we have defined it. At every such fundamental crisis there is a right and a wrong side, and man makes choice between them at his peril. There is a Thomas Hutchinson and a

Samuel Adams, a Jefferson Davis and an Abraham Lincoln for every attempted revolution. In the long run, government must conform to the social will, itself a product of the economic conditions of the country. It may be accident or prescience, but some read the writing on the wall and become heroes. Others fail to read it and suffer the hard penalties of failure.

Before entering upon the discussion of the nature of the obligation due from the state to its people, let us be clear as to the nature of the obligor. To use the legal phrase, every citizen in a democracy is severally liable upon the obligations of the state. We frequently speak of the duty of the citizen to participate with his whole heart and mind in the determination of public questions, as a duty he owes to the state. It is in fact a duty that he owes because he is the state. It is a duty owed not to a cold abstraction but to his fellow-men. Too little emphasis is placed upon this obligation side of citizenship. We hear a great deal about the sovereignty of the people, but it is the powers rather than the duties of sovereignty that are held prominently in mind. Every loud-mouthed fellow on the hustings crowds upon his hearers the fact of their power. The completeness of their control

over government is made an issue at elections. There are few to remind them that power carries with it responsibility, in this case responsibility for the lives, health, morality, and happiness of a nation.

This failure of the popular sense of responsibility is by no means unaccountable. When Louis XIV cried out *"L'état, c'est moi,"* it was obvious that he assumed the obligations as well as the privileges of power. Since his time we have diffused sovereign power among the people without the state suffering the least diminution of its authority. Indeed, the state is stronger now than then, and the government infinitely more secure on this broader basis than on the narrow support of personal power. Power is divisible. Separate it into millions of parts and they readily combine to make a whole. Its determinations thus reached are no less authentic than when they originate in the brain and purpose of a single man. Responsibility, on the other hand, is indivisible. Half a sense of responsibility is as good as worthless. Divide it by a million and no reassembling of parts will ever give the whole again. Man must be wholly responsible or he will not be responsible at all. It should be an inspiration to that end that he is not responsible to a mere abstraction, but to a living, moving, suffering humanity. If this

is an age of philanthropy—and we see evidences of a growing love of man for man on every side—it would seem to be easy to carry the eagerness of that love into political life. It should be the most potent motive for intelligent and honest activity in performing the functions of the state. When by our vote a bad mayor steps into office we should be red with the shame of it. Of his every act of maladministration we should say, "We did it and we did it to our fellow-men!" This is our only hope of good government.

Here we meet another difficulty that besets the establishment of a true sense of responsibility among individual members of the body politic. The evil results of maladministration, while inevitable enough, are by no means obvious. In simpler times the consequences of misgovernment were open and palpable injustice, robbery and oppression. In these intricate days, sins governmental are of a more mediate character. Newly elected Mayor Smith appoints ex-Divekeeper Jones as Chief of Police. No one is thrown into a bastile, or banished, or bastinadoed. There is simply less efficiency in the police department. The city's money is wasted; but that fact comes home in no perceptible form to the non-taxpaying voter, and only in a slight measure to the taxpayers

themselves. The matter is passed by with a "Jones is a good fellow." It is more than likely, however, that waste in the police department has prevented the city from undertaking some useful improvement, such as the opening of a playground in a congested tenement district. Scores of boys and girls have lost their chance for health, perhaps for life itself. It is hard for the voter to see that he has committed murder by the simple act of casting his ballot, but under such circumstances he has. Legal and moral science concur in fixing upon every man the intention to produce every reasonable consequence of his acts. The criminal voter is the most common type of criminal we have.

The obligation which the state owes to its members is justice. I do not mean by justice the thing administered by judge and jury. Neither do I mean by justice that narrow personal quality which is listed in the manuals of ethics with courage, temperance, chastity, and kindred "virtues." The justice to which I refer is social justice, not differing in kind, perhaps, from the personal variety, but so far removed from it in its actual manifestations as to be scarcely capable of comparison with it. It is this justice which is "the great end of man on earth."

If it be questioned that justice is the sole duty of the state to its citizens, a momentary analysis of the other "virtues" will show them to be but synonyms of justice or purely personal qualities impossible to a corporate body. A state cannot be brave, except in its relation to other states, a situation in which it partakes largely of the character of a person. It cannot be chaste or temperate, except in the sense of moderation, which is a phase of justice. Honesty and fairness are but other words for justice. The relations of individuals are also affected by motives which impel to conduct more than just. "Love" and "charity" are familiar names for such expansive impulses. Life would lose its charm without them. From the point of view of individual ethics they are all important; but with the state there is no room for any obligation beyond simple justice. The self-abnegation of the state would reduce, not increase, the sum of human happiness. It would merely be the subversion of the interests of the many to the interests of the few. The state cannot give more than justice to one without giving less than justice to another,—without robbing Peter to pay Paul. The best the state can do is to give fair play to all its members.

Justice is simply the widest possible diffu-

sion among all the members of society of the opportunity for self-realization. As to what it is in the concrete, no two generations give the same answer. It is a variable, constantly approaching infinity. Nautilus-like

> *"Each new chamber, loftier than the last,*
> *Shuts it from heaven with a dome more vast."*

The history of the world's progress is found in its expanding definition. The street boy of today knows more of social justice than the immortal Plato. Was not Plato's ideal state, doubtless in perfect consonance with his idea of justice, founded upon a system of slave labor? Plato saw with the eyes of his time as we with the eyes of our time. Paul preached a gospel which put master and slave on an equality before God, but he taught in the same breath the duty of slaves to submit to their masters. Ascending the years to the full maturity of the feudal system, we find the laborer no longer the personal property of the master. We find him, indeed, possessing certain rights which the master must respect; but he is attached to the soil, with no liberty to come or go, and burdened with heavy services. In 1789 we find the French Revolution enacting a new ideal of justice in the abolition of the old restraints and privileges. We find the Eng-

lish economists of the first half of the nineteenth century preaching *laissez faire* as the only rule of fairness and justice. Today we know that to leave men to work out their economic salvation unhampered by legal restrictions is simply to enact the dominance of the strong and the subjection of the weak. In a state of freedom the race is to the swift and the battle to the strong: witness the acquisition of the resources and opportunities of our country today by a few great interests. In the inactive state the extremes of society grow steadily apart, the fortune of the parent determining the future of the child. The great mass of those born down stay down or sink lower. If there is to be genuine equal opportunity for all it must be secured through state action limiting the strong, and protecting the weak. Justice means, then, the curbing of corporate power, the regulation of monopolies, the prescription of the terms and conditions of employment. It means pure food laws, enforced. It means schools, libraries, playgrounds, nurseries, parks, lectures, and a wide variety of social enterprises. It is significant that the "Money Power" which followed Hamilton against Jefferson, demanding a wide exercise of governmental authority, have learned the value to themselves of freedom from govern-

mental control, and are advocating a strict construction of the Constitution. It was the proletariat who followed Mr. Roosevelt into a "new nationalism," and beyond.

The phases of justice are as varied as those of human life. To generalize, justice is the current ideal of social and economic fair play. Popularly it is the "Square Deal." It does not imply equality of possessions or of standing in the community. Equality in this sense would be injustice, unless we are to deny reward to virtue and talent. Neither is justice synonymous with socialism, although many of its manifestations are socialistic. It goes to the point of an opportunity for all men to be, and do, and get the best. That is all.

In conclusion, one further fact must be emphasized. Justice is impossible of achievement today except through the state. In some way the social will must be forcibly exerted to settle our vexing problems. Modern industrial development has forever destroyed competition as a method of controlling prices. The consuming public is helpless in this regard except as it is capable of definite political action. Protection against infected milk, impure water, embalmed beef, and sweatshop clothing is far beyond the power of the individual. He lives in an ignorance, by no

means blissful, of the origin of his dinner, his coat, and his cigar. We could in a simpler state of civilization raise our own food, make our own candles, own our own horse, and depend upon our own exertions for the abundance and purity of the supply of everything in common use. We have lost control over the quality and price of almost every enjoyable commodity and service. Our only help is in the state, whose activity is ubiquitous and whose arm is strong with the strength of the millions.

The state has a wonderful new work to do, far beyond us as individuals. Some fear its increased social activity and presage the depreciation of individual development. It will not check but foster individuality. Wider opportunities for self-development are inherent in social fair-play. Right living conditions, otherwise impossible, will make men stronger, wiser, more aspiring than ever. If the completest self-realization be the goal of ethical conduct, the way to that goal for the mass of men is through justice. The enactment of justice, as the light of the dawning twentieth century gives us to see it, is the duty of each of us as fully responsible participants in the power of the state.

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## CHAPTER II

### THE WORKINGS OF REPRESENTATIVE DEMOCRACY

Representative democracy is a recent innovation, a scarcely tried experiment. The so-called democracies of ancient times were neither representative nor democratic; the right to participate in the government was limited to much less than the whole adult male population, while the device of representation does not appear to have occurred to the ancients. Representative government grew up naturally, out of the conditions of mediæval Europe; but not until well into the nineteenth century did it take on a democratic form. In Great Britain, which possessed the oldest and most famous representative assembly, the suffrage was not at all widely extended until 1867, and it was not put upon a genuinely democratic footing until 1885. France, save for brief periods, never enjoyed a government based on the votes of all the people until 1871. The constitution of the North German Confederation first introduced genuine universal suffrage into Germany. In our own country, severe restrictions

on the right to vote prevailed in most of our States down to 1830, and it was not until about 1850 that universal white male suffrage came to be the rule in the United States. The mountain cantons of Switzerland are the only existing political organizations which have enjoyed democratic institutions for any long period of time; and their type of democracy is direct, not representative.

There is no exaggeration, then, in saying that our popular representative government is practically an untried experiment. This is a fact, however, which the American people are very prone to neglect. That pseudo-patriotism which finds its expression in the spread-eagleism of the Fourth of July oration takes it for granted that our form of government is perfect. As a matter of fact, our kind of government has existed for too short a period to have proved itself beyond question. Many men of learning and wisdom have decried democracy, and they have been able to support their arguments with abundant references to our own unfortunate political experience. We have had too many Platts, Quays, Ruefs and Lorimers; too many machines, gangs and bosses; too much waste and too much corruption in government to be brash in our assertions of the great superiority of our institutions. If American de-

mocracy is to stand, it must be by the application of a constructive criticism which will lay bare abuses that pervert its activity. This is not at all inconsistent with a firm belief in its vitality and permanence. Indeed, it must be said that at no other time or place in the history of the world has there been so profound an occasion for hope of the solution of the problems of a government in the interest of all as in the United States today.

It is remarkable how little we who are actually participating in the conduct of a democratic government know of the workings of democracy. Practically the only light that has been thrown upon this subject has been by one of the most severe critics of all popular government —Sir Henry Sumner Maine. In his essay on the "Nature of Democracy," he says: "Democracy is a form of government, and in all governments acts of state are determined by an exertion of will. But in what sense can a multitude exercise volition? The student of politics can put to himself no more pertinent question than this. No doubt, the vulgar opinion is that the multitude makes up its mind as the individual makes up his mind; that the Demos determines like the Monarch. A host of popular phrases testify to this belief. 'The will of the people,' 'public opinion,' 'the sov-

ereign pleasure of the nation,' 'vox populi, vox Dei,' belong to this class, which indeed constitutes a great part of the common stock of the platform and the press. But what do such expressions mean? They must mean that a great number of people, on a great number of questions, can come to an identical conclusion and found an identical determination upon it. But this is manifestly only on the simplest questions. On the complex questions of politics, which are calculated in themselves to task to the utmost all the powers of the strongest minds, but are in fact vaguely conceived, vaguely stated, dealt with, for the most part, in the most haphazard manner by the most experienced statesmen, the common determination of the multitude is a chimerical assumption. The truth is, that the modern enthusiasts for democracy make one fundamental confusion. They mix up the theory, that the Demos is capable of volition, with the fact, that it is capable of adopting the opinion of one man or of a limited number of men, and of founding directions to its instruments upon them."

The reader may test for himself the validity of Maine's theory. Even small committees of four or five people are utterly unable spontaneously to reach a conclusion. One man makes a proposition, another criticises it, an-

other suggests amendments or proposes an alternative, and in the end the will of the committee has simply been adopted from the suggestions of the individuals who make it up. Of course, this process somewhat approximates the mental deliberations of the individual, but when we are dealing with large groups of men even this approximation disappears. The larger the group, the less opportunity there is for discussion and amendment, and the more nearly the group is reduced simply to adopting or rejecting the proposals put before it. This principle we shall find of great value in estimating the work of legislatures and the possible results of the initiative and referendum. It is of vital importance, also, in settling the place in our institutions to be occupied by political parties. It is true that the pressure of like forces upon men in similar environments frequently brings it to pass that many persons spontaneously and without any collusion come to possess similar ideas. The great uprising of the German people against Napoleon is a sufficient historical example of this fact. It does not, however, detract from the validity of the original principle that a democracy is capable only of adopting the opinions of individuals or limited bodies of individuals. It simply means that the great mass of the people receives suggestions in such

critical times from a relatively larger number of sources. It means many leaders rather than few.

In modern times there is no lack of agencies for producing that limited volition of which the Demos is capable. Many of the criticisms which have been leveled at democracy have been really due to the imperfections of what Mr. Bryce calls the "organs of public opinion." The daily newspapers, which are more numerous and more efficient as distributors of news in the United States than anywhere else in the world, have, through very natural processes, come to be dominated by what may be called their business side. Not only do the owners of the newspapers dictate the editorial policy of their papers, a thing which is of course unavoidable and not at all improper in itself, but they very frequently permit their large advertisers to exercise, in particular instances, this power for them. If the matter stopped with the expressions of the editorial page, which every one knows to be of an *ex parte* character, the evil would not be great. There is, however, a rapidly increasing tendency to color the news; to ignore or pervert news favorable to their opponents, and to magnify that favorable to the cause for which they stand. Newspapers all over the country, of every shade of political be-

lief, are guilty of this practice. Of course, there are limits to which it can not go. There is a point where the news instinct of the paper triumphs over the political views or greed of its proprietors. A paper cannot utterly cease to be a "news" paper and continue in business. Short of this limit, however, they have a considerable latitude for massacring truth. Another point worthy of our consideration is, that most of the great newspapers are owned by men in close alliance with the great corporate interests of the country, and that, on the whole, they present to the people a one-sided picture of political conditions. There is danger that the newspapers will become the instrument of a single class.

It is obvious that although the newspapers are the most natural organs for the creation of public opinion, they have lost a considerable degree of influence which they once possessed. Men and causes, unable to get a fair hearing through the newspapers, have had to resort to other means of reaching the people. This has resulted in the recent revival of the platform as a means of public discussion. There was a time only a few years ago when it was very common for dealers in trite phrases to remark upon the decline of oratory in America. We are now living in an age of oratory—not, per-

haps, of the old flamboyant variety, but even more effective in influencing the judgment and conduct of men. From the Socialist on his soap box, or the militant suffragette on her corner barrel, to the wonderfully effective campaigns of such great national figures as Bryan, Roosevelt and Johnson, there is more public speaking today than ever in the history of our country. The history of Governor Johnson's campaign in California in the Fall of 1910 is a case in point. He started out in the late summer of that year, without the aid of the newspapers, with practically no organization behind him. He traveled the State in his own automobile, speaking everywhere—and the results of the election proved conclusively that he had come nearer to the people than his opponents who had abundant newspaper support.

Another result of the failure of the newspapers to open their news columns fairly to all sides, has been the power and influence of the great weekly and monthly periodicals. The illusion which used to glorify for the average American whatever he read in his daily paper still clings in considerable degree to the magazine; and it is not over-praise to say that they have been truer to their trust and have done more to preserve the faith of the people than have their daily rivals. Pamphlet literature,

so effective a hundred years ago, has become almost useless as a means of creating opinion. Books are just coming into their own. It is said that in England,—and it is certainly coming more and more to be true in the United States,—the most popular types of literature are those which deal with social and political questions in a serious way. It may be that the tremendous problems which we now face are reflected in the seriousness with which the people are approaching them. The day of the book, at once accurate and popular, is dawning.

The character of the public will thus created, and, as we shall see, focused through the instrumentality of political parties, has seldom been deliberately evil. With the exception of a few repudiations of state and municipal indebtedness, a few scattering acts which may be interpreted as confiscatory, and an occasional expression of class or race bitterness and prejudice, there has been nothing to mar the honor of our American democracy. Indeed, it is positively unthinkable that the great mass of the people should deliberately and intentionally do wrong. In this respect the Demos is the superior of the individuals who make it up, and public opinion is more moral than private opinion. It is useless to deny that democracy has done many wrong and harmful things, but they

have been the product of mistake and not of malevolence. Upon this proneness of democracy to error, many writers and speakers of the conservative type have wasted a great deal of eloquence. I think it can be safely admitted by the firm believer in popular government that the people, as a whole, are more liable to errors of judgment than a limited class of the well born and well educated. The more inclusive our ruling class, the less efficiently critical it becomes. On the other hand, the narrower we make our ruling class, the less honest it becomes. No oligarchy or aristocracy ever governed for a long period in the interest of all the people. It is so fatally easy for those in power to assume that their interests are the interests of all; it is so difficult not to see things from the point of view of one's own pocket or prejudice, that the limited ruling class is almost sure, without any necessarily evil intent, to subordinate the welfare of the rest of society to its own. This is the reason why the careless phrase which we have heard so often repeated —"mob rule"—ought to have no terrors for the American citizen. The people are, in a certain aspect, a mob, capable of being violently misled and of making hideous mistakes; but in the long run, over any considerable period of time, their judgment will point the way more

surely to the common good than that of any class among them. If we hold, as we must, that government exists for the benefit of the governed, and that its end is to produce the maximum benefit for all, we can hardly deny the superiority of democracy to other forms of government. There is no escape from democracy and its evils, except into dangers much more terrifying.

Now, the Demos in the United States has ruled, not deliberately badly, but, in many instances, with bad results. Serious charges are brought against it. The causes of its wrong doing may be reduced to two:

(1) Indifference, a state of mind largely due to that lack of a sense of responsibility to which we have referred in the last chapter. There is no cure for this indifference except an appeal to the moral consciousness of the individual citizen. Such appeals are frequently voiced today, and they are having their effect. People are becoming less careless; more and more intensely interested in the vital problems of government.

(2) The failure of our governmental machinery to establish the responsibility of its several agents. In other words, our system of government is such an intricate thing that the popular mind cannot follow its processes and fix

blame and praise where they belong. These defects we shall examine carefully in the succeeding chapters.

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## CHAPTER III

### THE PLACE OF POLITICAL PARTIES

Many very intelligent persons profess to see in political partisanship a fruitful cause of the failures of representative government. "Partisanship" is for them the direct antithesis of "Patriotism," and they have ready to hand all too numerous instances in which so-called representatives of the people have employed their power to the aggrandizement of their party rather than for the service of the state. They can draw an indictment against party government on so many counts as almost to convict it without trial. On the other hand we find many persons who affirm the necessity of parties and who, while minimizing the evils of partisanship, are loud in their assertions of the service which a party renders in the process of government. Every new voter is faced by the problem of party allegiance. So is every old voter who thinks. It is, therefore, extremely pertinent to inquire into the relation which the citizen should sustain toward parties.

Until the beginning of the nineteenth century

parties were generally regarded with abhorrence by patriotic men. Washington in his "Farewell Address," warned his countrymen in the most solemn manner against the baneful effects of the spirit of party. "This spirit, unfortunately, is inseparable from our nature, having its roots in the strongest passions of the human mind. It exists under different shapes in all governments, more or less stifled, controlled, or repressed; but in those of the popular form it is seen in its greatest rankness and is truly their worst enemy. The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissensions, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to more frightful and permanent despotism. The disorders and miseries which result gradually incline the minds of men to seek security and repose in the absolute power of an individual; and sooner or later the chief of some prevailing faction—more able or more fortunate than his competitors—turns this despotism to the purpose of his own elevation, on the ruins of public liberty." Bolingbroke, in his "Patriot King," described the ideal monarch who should break down party domination and command for the state the services of all its best

men. It was on the theory of this book that poor George the Third tried to conduct the affairs of his kingdom. Even so great a statesman as Chatham held that this country ought not to be governed by any party or faction, and that if it were so governed the Constitution must necessarily expire. Burke was the only great writer of the age to defend parties. His definition of a party deserves attention and we may well adopt it as expressive of what a party ought to be. A party, he said, "is a body of men united for promoting by their joint endeavors the national interest upon some particular principle on which they are all agreed."

The fact is that there was much more in the previous history of parties to justify the opinion of Washington and Chatham than that of Burke. He was, at least in this instance, a political prophet. It may not be certain that there have always been parties, but it is highly probable that they have existed from the time when man first began to have community life. The most primitive band of savages naturally falls into parties as it debates the fate of captives and the disposition of the spoils of war. From that time on wherever there has been difference of opinion on a public matter there has been a division into parties. Until quite recently, however, such bodies of men as Burke

describes had no means at once peaceful and honest by which they could bring the particular principle on which they were all agreed into effect. The Yorkists and Lancastrians of the War of the Roses were simply rival parties contending for the control of the state in the only way open to them under the circumstances of the time. Cromwell was a partisan leader who brought his party to victory by his skill on the battle field. Even where, as in the Greek and Roman Republics, the forms of democracy were more or less observed, the idea of a distinct change of rulers and policies without banishments, confiscations and executions was almost unknown. The Italian City States of the Middle Ages and, to a certain extent, the South American Republics of today fall into the same class. In all of them the electorate was very narrow or, if broad, very ignorant. If narrow, as in the Greek Republics and the Italian cities, there was always the populace to which the defeated candidate might appeal to correct by force the decision of the ballot. If broad and ignorant, and the real ruling class differed among themselves, the contests of the rival factions were conducted by buying votes or enlisting men to fight.

It is only since the first quarter of the nineteenth century that the extension of the suf-

frage and the improved intelligence of the people have combined to secure in the English-speaking countries and, to a less extent in the other civilized quarters of the world, the possibility of an orderly change in leaders, policies and even forms of government. Such striking changes as have been introduced in many of our State constitutions by the adoption of the initiative, referendum and recall; and such alteration in the power of an historic branch of the government as has been made in England through the abolition of the veto power of the House of Lords, are now made with no greater disturbance than the discharge of unlimited eloquence. Rivers of blood would have flowed at the mere suggestion of such fundamental alterations in the form of any government two hundred years ago. The case against parties was very much stronger when Washington wrote his "Farewell Address" than it is today. Parties which formerly might resort to any means and go to any lengths in the prosecution of a triumph are now, comparatively speaking, political in their methods. They may still be utilized by powers that prey, and their action is frequently perverted by lesser forms of corruption, but they are no longer necessarily bad. They are simply like men or eggs, good or bad as circumstances determine.

There can be no doubt that such a morally indifferent institution must make good its right to existence on some ground of necessity. Here parties have all the best of it. Not only are they necessary in the sense that the natural traits of human nature make them inevitable, but in the sense that democratic government is impossible without them. As early as Washington's time they had become essential to the conduct of government. Royal prerogative had ceased to be the source of authority, and power had been transferred, not, it is true, to the people, but at least to large bodies of men. A few individuals may get together and, without any artificial organization whatever, arrive at an agreement on a given question. Such ability may even extend to as many persons as make up the population of a small village. Beyond this point a body of people cannot render an orderly decision upon questions of men or measures without the help of parties. We have already noted Sir Henry Sumner Maine's answer to his own pertinent question: "In what sense can a multitude exercise volition?" As a matter of fact it is through the agency of parties that the Demos makes up its mind in all large states. Elihu Root in a lecture on the "Function of Political Parties" makes use of the best possible illustration of the confusion

which would exist without parties. "If you can imagine all the sixteen hundred thousand voters of the State of New York, for example, going to the polls on an election day with no previous concert of action, but each determined to vote for the best man—that is, each determined to vote for the man who of all his acquaintance seems to him the best to fill the position, or for the man whose opinion most closely agrees with his upon some subject which happens to be uppermost in his mind—what would be the result! What thousands of names would be found upon the ballots when they came to be counted! If a majority of votes were required to elect, of course there would never be an election. If only a plurality of votes were necessary to elect, the largest number of votes cast for any one man would inevitably be a very small proportion of the total of votes cast. It is highly probable that the great majority of the voters would have preferred that the man with the plurality should not be elected, and would have been quite ready to agree on some one else whom they all preferred to him and considered but little less desirable than the various persons for whom they had cast their scattering ballots. The men elected in such a way would have no guide as to the principles, or policies, or rules of conduct which the majority of the voters

wished them to follow in the offices to which they were elected.

"Such a method of conducting popular government, however, is not merely futile, it is impossible; for human nature is such that long before such an election could be reached some men who wished for the offices would have taken steps to secure in advance the support of voters; some men who had business or property interests which they desired to have protected or promoted through the operations of government would have taken steps to secure support for candidates in their interest; and some men who were anxious to advance principles or policies that they considered to be for the good of the commonwealth would have taken steps to secure support for candidates representing those principles and policies. All of these would have got their friends and supporters to help them, and in each group a temporary organization would have grown up for effective work in securing support. Under these circumstances, when the votes came to be cast, the candidates of some of these extempore organizations would inevitably have a plurality of votes, and the great mass of voters who did not follow any organized leadership would find that their ballots were practically thrown away by reason of being scattered about among the great

number of candidates instead of being concentrated so as to be effective."

Here we have admirably set forth the reasons for the existence and the justification for the activities of parties. We must, however, go further. Not only is it necessary that there be parties but there must normally be no more than two main or principal parties. If we suppose the process of party formation suggested by Mr. Root to go on, at each succeeding election there will be fewer and fewer groups. The same reasoning which prompts individuals to form groups instead of scattering their vote resultlessly applies to induce groups to unite into ever larger units. The limit is reached when the whole voting population is divided into two great divisions, the individual comprising the divisions ready to sacrifice the many little things about which they differ for the sake of more surely obtaining the few things which they hold to be of most importance. The motive may be office, business interest, or principle. It may be worthy or unworthy. The essential fact, however, is that there is an inevitable tendency for men, at any rate men of the Anglo-Saxon race, to cohere in huge political organizations which engage in a gigantic struggle for the control of the government. Indeed no one can truly understand our two-

party system without taking into account the Anglo-Saxon's love of games and his willingness to sacrifice many things to a good soul-satisfying contest. It is true that there are permanently some groups of individuals too much devoted to their peculiar doctrines to give allegiance to one or the other of the two great parties. It is also true that there have been at various times in the history of the United States and England third parties of great size and temporary political importance. They were born at times when public opinion was undergoing one of its periodical readjustments, but the number of parties was promptly reduced to two either by the disappearance of one of the old parties or by the absorption of the new. The merit of the two-party system lies in the fact that there is by its means the nearest possible approach to a determination of what the majority of the people want. It would be idle to contend that the system always works with the accuracy of a law of nature, but over long periods of time and within measurable limits it does work out results more satisfactory than any other yet devised. Out of the struggles of the great parties come compromises and, out of the compromises, victory for one side or the other. Public opinion has through the triumph of one or the other of them an authen-

tic expression, and by them the majority really rules.

It is true that in the countries of continental Europe parties are not two, but many. They have not passed the group stage of party development. There are a variety of assignable reasons for this difference from Anglo-Saxon practice. It is said that the European holds opinions of a deeply theoretical tinge and that he is much slower to abandon them for the practical advantage of winning an election than is the Anglo-Saxon. This may be because he holds his opinions more sincerely. It may rise from his lack of political experience of the necessity of compromise. It may be because he is less of a natural sportsman than the Englishman. There are, besides, in each of these countries reasons peculiar to each which have tended to keep political groups apart. In Italy there is the strength of local and personal ties. In France the presence of a Royalist group to the right and a Socialist group to the left of the genuine Republicans has tended to prevent the creation of well-defined party divisions among the great mass of the people. In Germany the inferior position of the Reichstag and the policy of the Imperial Government in making from time to time differing combinations of groups as the source of its majority, has had distinct

effect in deterring the formation of great parties. It is worth considering that all of these countries have had much briefer experience with representative institutions than our own race. Ever since the days of Edward I a considerable proportion of the English people have had the privilege of selecting members of Parliament, and from these centuries of experience has been evolved the two-party system.

Having thus analyzed the nature of parties and their place in democratic government we may now properly turn to the ethical relation of citizen and party. If, as we have seen, parties are not intrinsically evil, are inevitable in human nature, and necessary for the conduct of democratic government, nothing can be clearer than the duty of the citizen to be an active partisan. It boots him nothing to urge that the actual existing parties are corrupt and full of evil works. They are so only because of the failure of himself and others of his kind to participate in their activities. If the citizens who actually take an interest in the affairs of any party are honest and intelligent, as are the majority of our citizens, that party will be as they are. If the party councils are left to the direction of the ill-disposed minority the party will partake of their ill disposition. Here we

have an essential instrument of government which may be turned to the good or evil of the country as good or evil men control it. Under such circumstances to avoid party service is treason.

Each voter should join a party according to his or her individual conviction. Preferably the choice should be of a great national party of which there are normally but two, although, sometimes, in periods of party readjustment, more. Of course if one's deliberate convictions lead into one of the smaller parties which, as has been explained, exist for the expression of particularist opinion, it cannot be denied that there is in such matters no higher guide than a deliberate conviction. It should be remembered, however, that in taking up such an allegiance one shuts himself off from participation in the great national movements for achievable results, and by so doing condemns himself to a life of unavailing protest. Once in a party one should take an active part in its work. There is little room in these days for the kid-glove indifferentism which some persons of so-called culture affect toward things political. There is no place at all for a man or woman who reclining at ease captiously criticises the conduct of those who toil in the heat of the day. The selfishness which prompts an active poli-

tician to corruption is no worse than the selfishness which keeps otherwise incorruptible men out of active politics. This does not mean that every citizen has got to be a member of party committees and spend all his time at party "Headquarters." It simply means taking an interest in party proceedings and being ready to participate intelligently in all the selective functions to which party members are called. There should be also a reasonable willingness to accept more onerous duties if the public good demands it.

To the party of his choice the citizen should remain true even when its conduct is no longer wholly pleasing to him. His selection should have been made, not on the ground that some particular candidates at the moment of his admission to the suffrage excited his admiration, or because the party was his father's or his friend's, but because the declared principles and general attitude of the party represented, as near as may be in such matters, his political ideals. So long as this general attitude is preserved his allegiance should remain unbroken even though in some particulars the policy of the party diverges from his standard.

He should leave his party at the moment when its general attitude and his cease to coincide. In other words, when he differs with the con-

trolling element of his party on essential matters, it is his duty to seek elsewhere that representation of his principles which he can no longer find in the object of his former faith. This obligation is the most emphatic of imperatives. Our worst political evils in the United States and England have arisen from that mistaken party loyalty that induces men to support an organization which no longer serves the purpose of its inception. All parties are born of great principles. Men rush into them with the fresh enthusiasm of the cause for which the party stands. They win success; place and power come to the leaders; the principles of the party are achieved or relegated to oblivion by the social and economic changes which modern times drag after one another with such precipitancy. Does the party then disband and merge itself into new organizations based on new issues? Never. It sometimes enters into a wild and futile competition with its rival for the right side of new issues as they arise, with the result that it is frequently found standing for things which, in spite of its manifestoes, it is afraid to undertake.

Parties persist long after the original reason for their existence has become ancient history largely for the personal benefit of those actively connected with their organizations,—

in other words, for the possession of office and what goes with it. This is made possible by the unthinking loyalty of the rank and file who have acquired in the days of real struggle a degree of *esprit de corps* which makes them ready to fight on in their old battalions. They love their party second only to their country, and sometimes with confusion as to the proper order of their affection. It is only natural that old veterans who have served the party in its days of adversity and of triumph should come to regard it as an end and not a means. Counting in part on this blind devotion and relying for the rest upon the use of patronage, the favor of corporations, and the expenditure of money, the partisans for profit keep the old machine in operation. So powerful is its momentum that it may go on victoriously for years after it has ceased to stand for any recognizable principle upon which its supporters are agreed. It is this effort to secure the effect—no longer securable by agreement as to principles—by appeals to the selfish instincts of individuals, which has corrupted our politics. If it were not for the fetish-like power of the party name; if men left parties, as they enter them, from conviction, there would be no party which the politicians could deliver to the corporations, nor would there be great opportunity for them

to practice successfully the smaller arts of corruption.

We find in the present party situation in the United States abundant illustration of what has just been said. The Republican and Democratic parties have long since ceased to stand for any principle on which their membership is agreed. Take the historic question of the tariff. A Democrat from the iron region of Alabama is closer to the Republican from Pennsylvania on this question than he is to his Democratic comrade from Texas. The two representatives of the iron industry will vote together on any schedule of the tariff that affects their section, no matter what the tariff principles of their party platform may be. The issues which once divided these parties have become blurred, and their effort to conciliate all sections of their following has made it almost impossible for them to take definite attitudes on the questions of the deepest current interest. At the same time they have gradually become permeated with corruption. They exist to serve the selfish desires of a few, and the creaking of their machinery is silenced with the oil of patronage. They both have had glorious histories. We cannot escape a genuine thrill when the "practiced hustings liars" point with pride to the

splendid achievements which adorn their pasts. The memory of great men still lingers redolently about them. It is unfortunately true, however, that whatever of glory and almost all of interest which attaches to them is historical. They are meaningless, except as examples of the compelling power of organization, because they no longer correspond to the real division of opinion in American life. This division is a threefold one. In the first place there are those who, because they profit by it, or because they are pessimistic of the possibility of improvement, or because they are simply inert, are desirous of permitting at least the present status to persist. In the next place there are those who, recognizing the existence of certain economic and social injustices, are ready to apply to them practical and concrete remedies while preserving the essential features of our present order. In the third place there are those who, because of the existence of social and economic injustices which they believe to be inherent in the present industrial system of the world, would overturn that system in its entirety. We may call these three groups of opinion Conservative, Progressive and Socialist. Our adherence to one or the other of them is inevitable. Honest people may belong to any

one of them, and it is certain that dishonest persons are connected with every one of them. One may be a Conservative with the idea of protecting his bank account, a Progressive for reasons of popularity, or a Socialist because he wants a chance at some one else's property when the crash comes. Most persons subscribe to one or the other from motives of real conviction. The overwhelming majority of our people are Conservatives or Progressives, both the Republican and Democratic parties being resolved into these two elements. The Socialist cannot for a long time to come, if ever, be a great party. No sooner do any of its aims become practicable than they become the common property of every party. Strangely enough, the success of Socialist measures only retards the growth of the Socialist party.

There can be little doubt that before long the actual alignment of parties will be made to correspond with the real differences of opinion. When that change has been brought about our parties will be in better shape than for over a quarter of a century to perform their important function of giving authentic expression to the will of the majority. There will be two great parties under names which the future will determine. To one of these great parties it is the duty of each voter to ally himself, to the end

that parties may well perform their function of determining the will of the people.

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## CHAPTER IV

### NOMINATIONS TO OFFICE

Intimately connected with the problem of party loyalty are the questions which arise out of the necessity of arriving at a preliminary understanding or agreement as to the candidates of the party. Our English ancestors found it unnecessary to have any machinery for this purpose. Down to the Reform Bill of 1832, suffrage was limited; the districts were small; in many, the seat in Parliament was in the absolute gift of some local magnate; and even where this was not the case the leading families were so easily dominant that their nominee, determined informally, was accepted by the rank and file as the party candidate. There is still in England no formal method of nomination. Any man can become a candidate for Parliament upon obtaining the signatures of a nominator and seconder and eight other persons. Party candidates in various districts are put forward by the local party committees, which are purely voluntary bodies, upon the suggestion of the "Central Office" of the party

in London. It was natural that in Colonial America the English custom should prevail, and candidates, who were generally men of wealth and family, simply offered themselves to the electorate without any preliminary party action of a formal kind. The one great exception to this was the "Boston Caucus," a group of leading men of the patriot side who met together and agreed to support particular candidates. It is almost needless to say that these candidates were almost always successful.

Immediately after the Revolution, there began a process of change in the matter of nominations for office. This was due in part to the rapid increase in population, accompanied by a rapid extension of the suffrage, which so greatly enlarged the districts in which candidates were chosen that some sort of pre-arrangement became necessary to party success. Even more important was the authoritative selection in advance of candidates for the increasing number of offices filled by the vote of the State at large. As early as 1790 the members of the legislature of one of the parties in the State of Rhode Island met together in caucus for the purpose of nominating candidates for state offices. After 1791 this method of nomination became general throughout the United States. It was a very natural expedient.

These legislators were already assembled—and in those times of slow and expensive travel the assembling of a body of representatives was no easy matter—and they might very well be taken to represent the feeling of the districts from which they came. The difficulty was that in such a caucus those districts which happened to have elected a member of the opposite political party to the legislature were unrepresented. This led to the system known as the "Mixed Caucus," in which the districts otherwise unrepresented were represented by delegates especially elected for this purpose.

In the meanwhile there had grown up a still more serious problem; namely, that of nominating candidates for President of the United States for whom the party electors in the several States could be expected to vote. In the first two elections there was, of course, practically speaking, no contest. In 1800 Adams and Jefferson were nominated by secret caucuses of the Federalist and Republican members of Congress. In 1804 the Republicans nominated Jefferson by an "open" caucus, or one of which no secret was made. Henceforward until 1824 there was but one caucus every four years, there being but one party. Thus the caucus seemed, at least, to have the power of absolutely determining who should be President, the candi-

date agreed upon by it receiving, as a matter of course, the votes of the only party. Naturally enough, this state of affairs produced dissatisfaction. Men began to say that Congress was usurping a power which had not been granted to it by the Constitution. They dubbed the institution "King Caucus," and the issue of its dethronement became one of the principal elements in national politics. The strongest opposition to the caucus came from the newer Western States where the spirit of democracy was very keen. This spirit found a leader in Andrew Jackson, and he became, in 1824, a candidate for the Presidency in opposition to the caucus candidate. By this time so general had become hostility to the caucus that only 66 out of 216 members of Congress had attended the caucus which had nominated William H. Crawford for the Presidency. In the campaign that followed, Jackson received a plurality of the popular vote, while Crawford ran a poor third. Congress elected Adams to the Presidency, but the caucus was dead, and no attempt has since been made to revive it. Its downfall insured the breaking up of the legislative caucus system in the several States.

The abandonment of the caucus did not, however, do away with the necessity of preliminary agreement as to candidates if the party was to

be successful. A new method of selecting candidates had to be developed, and this method was the "delegate convention," consisting entirely of delegates elected for the sole purpose of making the necessary nominations. The first of these delegate conventions occurred in Pennsylvania in 1817, and became the fixed custom for both parties in that State in 1823. During the next ten years it came into universal use as a method of nominating state officers. At the same time, the nomination of candidates for the Presidency came to be taken up by similar conventions. In 1831, the Anti-Masonic party, a purely ephemeral organization, held the first national delegate convention for the purpose of nominating a candidate for President. In December of the same year the Anti-Jackson forces met and nominated Clay; while in May, 1832, a Jackson convention met for the purpose of endorsing Van Buren as a candidate for Vice-President. Van Buren was nominated for the Presidency in 1835 by a Democratic convention, while the opposing forces that year held no convention. In 1840, however, both Democrats and Whigs employed the convention system of nomination, and every political party has done so previous to each election since that time.

The system of party organization which has

been brought into existence by these changes, and which maintained itself practically unbroken throughout the remainder of the nineteenth century, was, in theory, at least, popular and representative. Nothing could be in appearance more democratic. There existed a regular hierarchy of conventions built one upon the other, beginning with the town, village, or ward caucus in which all voters of the party were supposed to participate directly, and extending up through district, city, county, congressional, state and national conventions. This scheme of party control was adopted at the instance of the reformers of 1830 in place of what they called the corrupt and aristocratic system which had preceded it.

There is no question but that the convention was a great improvement upon legislative and congressional caucuses. The new system was, however, open to many abuses, which, throughout the next two-thirds of a century, developed alarmingly. In the first place, the town, village and ward primaries or caucuses, on which the whole superstructure was reared, were not fairly conducted. There was no legal regulation of them. The right to membership and participation in them was a matter not determined by law but subject to the will or caprice of the presiding officer, or, at best, of the other

persons present. There were no penalties provided for bribery, intimidation, nor for frauds in counting the votes. There was no provision for adequate notice being given of the intention to hold such a caucus, and "snap" caucuses were a common device of the wily politicians. They were attended by the roughest elements, and were frequently the scenes of disgraceful disorder. Peaceable citizens tended to shun them, and their control came quite rapidly into the hands of a new class which the politics of the Jacksonian era introduced into American society—the professional politician and office holder. Jackson did not invent the so-called spoils system, by which offices were used as a reward for political services, but he applied it with a vigor and completeness which had never been witnessed in American history before. Since his time there has always been a class of men making, or hoping to make, their bread and butter by politics and, in consequence, instant in every partisan service. Professor Goodnow, in his "Politics and Administration," shows how the establishment of this spoils system was a necessary evil in that it served the otherwise unaccomplishable purpose of so solidifying the parties as to make it possible for our check and balance system of government to work without constant friction. Control of all the branches

of government at once by the same party is, according to this theory, the only way in which our institutions can be made effectively operative. Whether the service rendered in this regard by the spoils system was as valuable as has been claimed, it is certainly true that the spoilsmen obtained a firm grip upon the political organizations through their control of the local primaries which in turn determined the complexion of the whole series of conventions. We shall see in a subsequent chapter some of the part that has been played by the saloon keeper and others of his ilk in the perfection of this political machine. It is enough for our present purpose to know that the party primaries being misrepresentative of the party membership, the delegate conventions above them were irresponsible and corrupt. Thus, a system which owed its inception to the spirit of democracy came to be in its working something very other than democratic.

The first attempt to regulate primaries was made by the State of California in March, 1866. This law was an optional one, which might or might not be adopted by the various political parties. If adopted, it provided for due notice of the call, for a preliminary statement of the qualifications of the members who were to participate in the primary, for a supervisor of the

balloting who was to be sworn to perform his duties properly, and for penalties for any breach of the law. New York, in the same year, established a penalty for bribery, intimidation, etc., at a primary. In 1874 California put about primary elections practically the same safeguards as those which its laws had previously thrown around regular elections, and by 1890 half of the States had adopted some kind of primary regulation. With the adoption of the Australian ballot which began with the State of Massachusetts in 1888, and was rapidly followed by other States, there arose, of course, an absolute necessity of regulating by law the system of nominations. The new ballot laws recognized the existence of parties, and provided for printing on the ballot the party designation of the various candidates. There had to be, of course, some way in which an authoritative determination could be made of the candidate entitled to use the party name. The result was that practically every State adopted primary regulations similar to those which protect other elections, while regulatory provisions have been applied to the conduct of conventions within the States. So far, no effort has been made to regulate by federal law the conduct of a national convention.

Even regulated conventions showed a dispo-

sition to be controlled more readily by political machines than the people would have them. The choice of delegates has been one of the tasks most commonly shirked by the busy citizen and there has never been evolved any very effective way of holding the members of these conventions responsible for the work they do. It was not unnatural, therefore, that politicians of the reforming instinct, finding themselves thwarted by the manipulations of the old-time leaders in conventions, turned an eye of favor upon the system of direct nominations. This plan had been proposed as early as 1878 in McMillan's "Elective Franchise." The first State to adopt the primary on a state-wide scale was Wisconsin, in 1903. Oregon and Alabama followed in 1904, and since that time about half of the States of the Union have adopted direct primary laws. These direct primary laws permitted the names of the candidates for the several offices to be placed upon the primary ballot by the presentation of a petition signed by a certain proportion of the qualified voters of the constituency. In order to participate in a primary election, it is usually necessary for the voter to have designated at the time of registration with which political party he intends to affiliate, which declaration or designation stands for at least a year. The results of the direct

primary have not been such as to excite either great enthusiasm on the part of the reformers or great chagrin on the part of political machinists. It seems that the direct primary has made it somewhat more easy for a reform movement, strongly backed and well organized, to overthrow the machine. It has not, however, obviated the necessity for organization. To carry the state primary for a particular candidate for Governor requires about the same exertion and the same vigor of organization necessary to carry an ordinary election. The result is that in ordinary times, where people are not greatly aroused, the old machine has a great advantage over any independent movement. The net result may be summed up to be that it is now possible, by the liberal expenditure of energy and the erection of a strong organization, to beat an organization already firmly intrenched. The remarkable facility with which the American people organize, politically—marvelously well illustrated in the sudden rise of the Progressive party—is the condition which makes the direct primary really serviceable to reform.

The latest application of the direct primary is the so-called "presidential preference primary," in which the voters of a State are given an opportunity to indicate their choice of the

party candidate for the presidency. At the same time, they elect delegates to the national convention, who may or may not be pledged to vote for a particular candidate. There are great advantages in this method of procedure over the old methods of choosing delegates to national conventions. It does give a choice to the people, and there is little doubt but that this direct method of election of delegates will soon supplant all other methods. Here, however, we run flat against one of those peculiar difficulties which the Federal character of our government often creates. While the State may provide a method of electing delegates to the national conventions, it cannot at all regulate the right of those delegates to sit in the national conventions. A national convention is called by the national committee of the party. This national committee is in the eyes of the law simply the executive committee of a voluntary organization, and it has the right to put into its call any terms it likes. It could provide that only blue-eyed or black-haired people should be delegates to the convention. Over such a national voluntary organization no state law other than that of the jurisdiction in which the individual members happen to be at the moment can have any legal authority. The result is such unfortunate circumstances

as those which led the Republican national convention of 1912 to refuse to seat two delegates duly elected from California under the law of that State. National conventions can be successfully regulated only by the nation. A statute for this purpose is now probably unconstitutional, but the Constitution should be amended to allow of the regulation of this important step in the choice of a president.

We have already seen the degree of success which the direct primary has achieved in breaking the grip of the machine politician. There are, however, certain defects of the direct primary, as it ordinarily exists. The first of these is the possibility of packing the primary. Primaries are packed both intentionally and by an unconscious disposition of the people to participate in real struggles. For example, if there be in a State a severe contest pending in the Republican primary, there will be a tendency for voters, when registering, even though they intend to vote the ticket of some other party in the election, to register in the Republican primary. This was very evident in the primary elections in California in 1910 and 1912. Furthermore, it is possible for the boss of one party to lend to the boss of another party voters who will support him in a primary contest. The other principal defect of the direct

primary is that even a greater premium than before is placed upon capturing the party nomination, and success in the party comes to be sought too eagerly. It does not give us any escape from the necessity of getting the party label attached to the candidate in order to insure his success. This was very well illustrated in the primary election in California in the fall of 1912. The great majority of California Republicans had become Progressives, and were determined to support the candidates of the Progressive party. They felt, however, that the control of the Republican organization, which they had secured by carrying the direct primary in 1910 when they had no suspicion of being anything but Republicans, was too valuable to be surrendered to their opponents without a struggle. They estimated highly—perhaps too highly—the value of the Republican name. The result was that they went into the Republican party, carried it for their candidates, and made Roosevelt and Johnson the Republican candidates in California. This enabled the Taft Republicans to raise the cry that they had been disfranchised, although it is difficult to see how, under the existing state of the law and of human nature, the Progressives could have done anything other than they did. The Taft Republicans went over in a body to

Wilson, and the electoral vote of the State was split. Frequently the consequences of the eager pursuit of the party name are more serious than those just mentioned. They often lead to deliberate fraud and corruption.

In no other country of the world, as we have seen, are executive officers elected at large. This, of course, renders the problem of nominations and elections much more simple than in this country. It is, however, worth while for us to remember that in none of the great European countries does a party nomination have anything to do with getting a man's name on the ballot. In England, as we have observed, any man who can get ten backers can run for Parliament. In France, the candidate for the Chamber of Deputies has merely to indicate that he intends to run. In Prussia he does not have to go through this formality; he simply runs. The provisions for balloting are still the same or worse than the crude ones which prevailed in the United States prior to 1890. No one would for a moment suggest going back to their antiquated practice in this respect. In England, however, the ballot, although much shorter than ours, is of the same sort. Indeed, the so-called Australian ballot is really the English ballot, and it was, more than anything else, prejudice against the English name, which led

to our use of the term Australian. On this English ballot there appear simply the names of the candidates with their addresses and their business. There is no party designation whatever. Candidates are the nominees of parties, but the voters are expected to know the name of their candidate well enough to get along without the assistance of a party designation. In England, the candidates are compelled to pay the expenses of polling—a thing which serves to keep out people who stand no chance of election. In France and Prussia, however, another method is adopted. Two elections are held. At the first an absolute majority of the votes cast is necessary for an election. If no one receives such a majority, a second election is resorted to. In France, at the second election there is no limit to the number of candidates, and a simple plurality wins. In Germany, the second election is confined to the two candidates who receive the highest vote at the first. This German method has been adopted by many American cities, including practically all those which possess the commission form of government. A variation of this form was adopted by the city of Des Moines, where the first election simply serves to narrow the number of candidates to two, without the possibility of any candidate being elected at that time, no mat-

ter what vote he receives. There are great advantages to this German system, or its Des Moines modification. Adequate provision is made for reducing the number of candidates. The person ultimately elected must be the choice of a majority of the people. He may not be the man whom they would prefer above all others, but he is surely the second choice, at least, of the majority. There is no necessity under this system of a party label. There is no premium for capturing the party standard. It is no more expensive than the direct primary system, which involves, of course, two state-wide elections.

The writer would not have you imagine that he is opposed to political parties. Indeed, he has already stated emphatically the necessity of political parties in a democracy. They should, however, be reduced to their proper place, and not made the well-nigh exclusive means of getting for a candidate favorable consideration upon the ballot. Under the two-election system it is not necessary to have elaborate regulation of party management and control. The ease with which a rival candidate can be put in the field disposes of the temptation to use underhand methods to secure a nomination. It does not do away with parties. They are still necessary to the success of democratic gov-

ernment, but simply as organizations to promote the conduct of government "on a particular principle," not as monopolies of the nomination market. In cities, according to the observation of the writer, the effect of the double-election system is to bring into existence before each election temporary parties which assume all the attributes of political organization and die with the hilarity of election night. Another result has been that the old trick of the "gang" of secretly promoting respectable candidacies in order to divide the vote of the good people is rendered negative by the requirement of a majority for election. We may then look forward to the direct primary ultimately giving way to a double or majority election system, in which there shall be no partisan designations on the ballot, or to some system of preferential vote which will accomplish a similar result without the necessity for two elections.

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## CHAPTER V

### MISREPRESENTATIVE LEGISLATURES

When our Revolutionary forefathers discovered themselves to be without legal government in the latter part of 1775, they began to take thought as to the form of organization best suited to their needs. They naturally exalted the Legislature as the most important feature of their government. During the long period of controversy with the mother country which preceded the Revolution, it had been the Legislature which, representing the people, had contended with the Governor, representing the crown. Executive power had thereby become unpopular; legislative power, popular. The legislatures were in many instances given power to elect the governor and all other state officers. Only in Massachusetts were they subjected to the gubernatorial veto.[1] They were, for the moment, practically all powerful. These legislatures, however, showed unfortunately little capacity in dealing with the criti-

[1] Veto existed in first New York constitution but was exercised by Council of Revision.

cal conditions which followed the close of the Revolution. Influenced by this experience the Constitution of the United States, the result of a moderately conservative reaction, gave to the chief executive an independent position, and, at the same time, a share in legislation, through the veto. The vigor of the new federal government led the States, by example, to give their executives the same independence and power. From that day to this the influence of the legislature has declined while that of the executive has been maintained.

The most obvious reason for this change has been that the executive has proved to be the only representative of all people of State and nation. In our choice of representatives in the state legislature and in Congress we have been governed often by considerations of local advantage. We have been much more concerned as to whether our Congressman could secure for us a handsome and expensive federal building than as to whether he held sound views on questions of great national importance. We have been more anxious that our State legislator should get for us some desired local expenditure of State money than he should be a real representative of the whole people of the State. Legislative bodies made up of persons chosen on such grounds have never been, and

can never be, genuinely representative of the whole community. As our legislatures have declined, we have come more and more to look to the Governor and the President, with their veto power and their commanding moral position, actually to govern for us. This is no mere popular superstition. It is the view of practically every well-informed, conservative man in the country. President Nicholas Murray Butler of Columbia University, exponent of the extreme type of political conservatism, declared in his Charter Day address at the University of California in 1906: "As a matter of fact, if our American political experience proves anything, it proves that the executive branch of the government is the most efficient representative and spokesman that the popular will has. So it was with Lincoln in the Civil War; so it was with Cleveland in the struggle for a monetary system; so it was with Roosevelt in the battle against privilege and greed. Indeed, in every real sense, the popular will in the United States has no other representative, for political purposes, than the President." The names of Stubbs of Kansas, LaFollette of Wisconsin, Hughes of New York, and Johnson of California are sufficient in themselves to establish the fact of the prominence in state affairs of the Governor.

The decline of legislatures is evident also in the limits which have been placed upon them by state constitutions. In the first place, all the later constitutions have, out of distrust of the legislature, been made to contain very many matters which, in the earlier documents, were left to the discretion of the law-making bodies. The constitution of the State of California, as it now stands, would occupy over one hundred pages of this book. It descends to the most minute details, of course removing all these matters from the competence of the legislature. Most of the state constitutions now limit the frequency and duration of legislative sessions, apparently on the theory that the less of legislation the better. In Alabama there is but one regular session of the legislature every four years. In many States the duration of the legislative session is limited to ninety, sixty, or even forty days. Further, the field of special legislation has been closed to legislators. Advantageous and almost essential as is the power of passing statutes to fit the varying needs of the localities of a great State, the abuses of the power had been so continuous and excessive, that the people determined, perhaps wisely and certainly with justification, deliberately to cut off the offending member. The current jests as to relative social advantage of service in the

state legislature and in the penitentiary are indications of the low esteem in which our legislative bodies are held. This low esteem has had a disastrous effect upon the personnel of these bodies, and the poor character of their personnel has, in turn, tended to added disrespect. At the same time, the vital importance of the legislature as an instrument of government has not declined. The law-making powers of the state legislature extend over an enormous range of subjects. It can make or mar the happiness and welfare of the whole community. We are truly in an unfortunate position when such great powers are entrusted to bodies so little trusted, and so frequently unworthy of trust.

If we would penetrate into the reasons for the unfortunate condition of our American legislatures, we must consider, briefly, the organization of legislative bodies. In the last chapter we saw that any considerable body of men is incapable of independent volition; that it simply can adopt only what is suggested to it. This applies to the problem of the legislature very pertinently. Edwin L. Godkin, in his essay on the "Decline of Legislatures," pointed out a very significant fact frequently lost sight of by serious students of the subject —that the Roman Senate, the archetype of legislative assemblies, was a consultative, not an

initiatory, body. It deliberated and said yes or no to the propositions of the magistrates and people. That other great model of a legislature, the only one which has had long and continuous existence to the present time, the British House of Commons, has also, throughout its history, limited itself to simple consultatory functions. In all its struggles with the crown, the demand of the Commons was that they were to be consulted in the matter of making and unmaking laws. It is true that individual members of the House have had from early times the right of introducing bills, and that private and local measures may be introduced by petition of those concerned, but there has never been a time in the history of the House when this right of private introduction of bills has been of prime importance. The chief desire of the House, and its chief business, has been to register approval or disapproval of the measures emanating from the ministers of the crown. The right of the House to be consulted on every proposition of law was finally settled in 1689. It soon thereafter became evident that the king could obtain the necessary assent of Parliament to the measure he desired only by appointing ministers agreeable to the majority of the House. From this situation developed the present system of

government by responsible ministers, by which the men who are the natural leaders of the majority party in the House of Commons constitute the cabinet, and at once administer the executive department of the government and initiate all important legislation. They are subjected to the questions and criticisms of the members, and their measures must stand the fire of debate. If the majority of the House votes down a cabinet minister's proposal, the cabinet resigns, and a new one is formed from the majority in the House. The fact that the question, "Who shall govern England?" is to be answered by the adverse or favorable vote on each bill makes the debate on measures a matter of more importance than can usually be the case in this country. Debate in the English House of Commons has been notably free, and there has been an abundant opportunity for men of talent to distinguish themselves in it and thereby to win places in the cabinet. The fact that this is possible attracts the best brains in England into the House of Commons. Of late years, of course, there have been placed upon the freedom of debate certain limitations, but the personnel of the House of Commons remains notably high; higher than that of any legislative body in the history of the world with the possible exception of the Roman Sen-

ate in its palmiest days, or of our own Senate in its brief period of glory from 1830 to 1850. Its legislative product, being determined by men whose political life and death depend upon the character of what they recommend, is superior to that of practically every legislature.

When our state governments were formed, the English system of responsible ministry was not thought of. Few Americans even knew that it existed in England. There were apparently none of the materials out of which to construct such a system in this country. The matter of introducing bills in the legislature was left to the individual members, each being on an equal footing with every other. It early became manifest that the number of bills introduced was too large to be dealt with by the House as a whole: that there must be some division of labor. The method adopted was the appointment of committees, each dealing with bills on a particular subject matter, sifting from them those that had merit and reporting them again to the House. Even a system of division into committees, however, has failed in Congress and in some of the larger state legislatures to reduce sufficiently the number of measures. There are introduced during the two years' life of a House of Representatives over thirty thousand bills and resolu-

tions. If each member spoke one minute on each bill, the session would last between eighty and ninety years.[1] Of course most of these bills fail to pass through the meshes of the committee nets. However, enough do pass through to make it impossible for the House, as a whole, to deal with them all. Toward the close of the session, especially, the lists, or calendars, upon which bills are placed in the order of their report from committee become so long that it is impossible to get through them. There has to be some means of reaching down into the calendar and getting out those measures which are of special importance and bring-

[1] In the 61st Congress the House of Representatives was obliged to deal with the following measures:

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|---|---|
| House Bills | 33,015 |
| House Resolutions | 1,008 |
| House Joint Resolutions | 295 |
| House Concurrent Resolutions | 65 |
| Senate Bills | 691 |
| Senate Joint Resolutions | 51 |
| Senate Concurrent Resolutions | 29 |
| Total | 35,154 |

For their consideration the House was in session from March 15 to August 5, 1909; from December 6, 1909, to June 23, 1910; and from December 5, 1910, to March 3, 1911. Deduction must be made for two weeks' vacation at Christmas. The total is about thirteen months. The first or special session was entirely taken up with the tariff, and only eight bills were passed. There were thus about eight and one-half months for the remaining 33,007 bills. The conservative character of the statement in the text is obvious.

ing them before the House. This has been for many years the function of the Rules Committee, and is the source of its power. Being able to report at any time a resolution for the suspension of the rules for the purpose of considering a particular measure or list of measures, it could control the proceedings of the House. Up to the changes made in the session of 1910, all the committees of the House, including the Rules Committee, were appointed by the Speaker. He was himself a member of the Rules Committee, with two other trusted lieutenants of his own party, and two members of the minority, who, for practical purposes, might just as well not have been on the committee. Since the fate of most bills was decided by a committee, and the fate of a great many others by the Rules Committee, it was obvious that the power of the man who appointed these committees was enormous. A measure once recommended by the Rules Committee was almost sure of passage. The House of Representatives is so large, its business so prodigious, that there is little time or opportunity for the members to engage in a discussion of bills on the floor. A great deal is said and printed in the "Congressional Record," but to very little purpose. The real work is the

work of the committees, and the Committee on Rules was the King of Committees.

It is clear that the function of selecting the measures to be actually considered by the House, which in England belongs to the responsible members of the cabinet, in this country belonged, prior to 1910, to the Speaker and the Rules Committee. These men, nominally the servants of the House, were really its masters. The young member arriving from the country, full of enthusiasm, soon found that his only chance of getting through a measure which his constituents desired was by doing the will of the Speaker and his fellows on the Rules Committee. Now, the power to determine what measures the House of Representatives shall consider must devolve on some one. Like every other considerable body, it is incapable of independent volition. It must have leadership. It differed from the British House of Commons in this—that the leadership in the House of Commons is responsible leadership, while the leadership in our House of Representatives was irresponsible. If the Speaker's measures were defeated, he did not resign. If they were passed and turned out to be bad measures, there was no way of holding him responsible for what had taken place. In his own district

he was popular because his position as Speaker enabled him to retrieve more local plunder than any other member could obtain in his place, and no successful effort could be made to hold other members responsible in their districts for what the Speaker had done. In England, just the contrary situation prevailed. Every member of the House of Commons is elected because he is a supporter of a particular possible prime minister. In this way, prime ministers become responsible, through the members of Parliament, to the people. In our system, the Speaker, controlling as he did the fortunes of members of the House, was apparently responsible only to himself. Power without responsibility is almost invariably abused, and the Speaker and the Rules Committee had power without responsibility.

In the spring of 1909 there broke out an open revolt against Speaker Cannon, and early in 1910 this took the form of a set of amendments to the rules by which the Speaker was deprived of the power of appointing the members of the Rules Committee, and was himself prohibited from being a member of the committee. The power formerly possessed by the Speaker was transferred to the House itself. In the fall elections of 1910 the question of "Cannonism" was an issue in many of the congressional

districts, and did no little to assist the Democratic party to win a majority in Congress. This Democratic majority still further tied the hands of the Speaker by handing over the choice of committees to the House, a thing which in practice meant that the Ways and Means Committee was selected in the first instance by the party caucuses and then by the House, while all other committees were selected by this first chosen committee. There has been much discussion of the effect of these amendments of the rules upon the procedure of Congress. There has been little external evidence of any alteration in the position of the Speaker other than that given by the rules themselves. Speaker Clark, while differing in personality from Speaker Cannon, and while being the choice of a nominally different political party, is a representative of the same political group from which Cannon was drawn. The chairmanships of committees were handed over to the senior Democratic member of each committee, and apparently few changes in the personnel of these committees were made. The result is that the control of Congress has remained in the hands of the same people, at least in the hands of some of the same people, who controlled it prior to 1910. The power of the Speaker has been greatly diminished, al-

though not destroyed. A man strong enough to secure the nomination of the party caucus as Speaker will, under ordinary circumstances, exercise great influence in the selection of committees and in the other operations of the great party machine. The majority floor-leader, however, has proved to equal if not to surpass the Speaker in importance. His position as chairman of the Ways and Means Committee gives him the choice strategic position. In one respect, the change of the rules will be productive of anything but good. We were just becoming thoroughly aware of the extent of the Speaker's power, and willing to apply the rather obvious remedy of holding the members of Congress responsible for the conduct of the Speaker of their choice; in other words, we were beginning to evolve something approaching responsible leadership for the House of Representatives. Every one recognizes that the power formerly exercised by the Speaker and the Rules Committee is necessary to the conduct of business. There was really on the part of the members of Congress and the people no quarrel with the power of the Speaker, but only with the way in which the particular Speaker exercised it. As often happens in such cases, however, they went at Speaker Cannon by attacking his power. It would have been much

better if there could have been devised and applied some method of retaining the power, trusteed for the benefit of the people. It will be a long time before the people come to recognize the responsibility of the new Rules Committee or of the Ways and Means Committee and its floor-leader chairman. We will have to adjust our minds to a whole new series of political ideas, and that, for a population of ninety millions, is a slow process.

Our state legislatures are but miniature representations of Congress. Ordinarily, the presiding officer of the lower house does not possess so much power, relatively, as the Speaker of the National House of Representatives; a greater amount being reposed in the important committee chairmen. On the whole, however, every criticism which applies to the organization of the House of Representatives applies to the organization of both the houses of the state legislatures. One of the most obvious results of this system in State and nation is to make a legislative career unattractive. It is in committees that the real work is done. Bills that are once reported from the committees stand, if they can come to a vote, an excellent chance of passage. Indeed, in most of our legislative bodies, bills receive very little consideration upon the floor. It is not meant

by this that no speeches are indulged in, for there is much talk at every stage of legislative business, but any one who is at all familiar with the character of debate in legislative bodies knows that these speeches have not, and are not expected to have, any appreciable effect upon the decision of the question. They are usually uttered for the purpose of making a record, of appealing to one's constituents, or of laying the foundation for future political activity. They are simply moves in the game of politics. The real discussion of measures takes place in the committees. Committee work is laborious and carries with it anything but glory. The work of committees attracts little attention and is given only a modicum of publicity. A large part of the work of the committeemen is very similar, as Godkin says, to that of college professors in correcting Freshman themes, eliminating mistakes, and discarding absurd propositions. For success in committee work, the qualities most needed are patience, adroitness and experience; qualities which are by no means uncommon among American politicians. There is little scope for the broader ability of the orator, the philosopher or the statesman. A glance at the personnel of any of our legislative bodies, except, perhaps, the United States Senate, will con-

vince any honest observer that a mediocre man can reach the highest point of authority simply by being reëlected repeatedly to the body. There is not a prominent leader in the House of Representatives who has not served term after term, and there are few of them who are anything more than patient, adroit and experienced mediocrities. Really keen men do not seek election to legislative bodies. There is nothing in legislative service to attract them. They can find in the law or in business a better scope for their activity, a better chance to make a name for themselves; and when it comes to the choice of the more important elective officers, such as Governor, United States Senator, or President, these men who have won their spurs outside of the legislature seem to suffer no handicap—even to possess an advantage in the race.

The members of the average American legislature can be divided into three classes: first, and largest, a body of well meaning men of meager ability, usually fairly well along in life, very frequently men who have made a success to a moderate extent in business and who come to the state legislature or to Congress because the honor of an election appeals to them; second, a small group of experienced, long-headed, wily politicians, old, usually in years, but al-

ways in experience. These men find it easy to rule and manage the mass of well-meaning persons of which we have spoken. It is almost impossible to define what they do except by employing that very expressive Americanism, "slip it over"; third, a small group of men, usually young both in years and experience, frequently members of the legal profession, in their briefless stage, who bring to the legislature considerable ability, courage and righteousness of motive. They battle with the second class for the control of the first. They only occasionally control the situation, but they at all times operate as a check upon the rapacious audacity of the second class. It is one of the saddest phases of legislative life that the best citizens from the small towns—the retired merchant or banker—makes the most pitiable type of legislator. They are as much out of place as a horse in a garage. They are opinionated, self-satisfied and easily fooled. They are easy marks for the lobbyist and the experienced manipulator. A constituency takes less chance with a thorough crook, known and watched as such, than with one of these "first citizens."

It is legislatures thus constituted which have employed those numerous deceptive tactics that have disgusted the people and have brought about our numerous constitutional restrictions

upon their activity. It used to be a favorite trick to place a misleading title on a bill; a title innocent in itself but quite misrepresentative of the measure appearing below. This was particularly the case before it became the custom to print all bills. There was one famous instance in a State of the Middle West, in which a bill was introduced regulating the running-at-large of cattle in one of the older and more settled counties of the State. It was a very long measure and it was expected, as a local measure, to go through upon the recommendation of the member from that county. One of the other members, however, became distrustful of the purpose of this bill, and insisted, as was his constitutional right, on the bill being read in full. It was read amidst the protests and jeers of practically the whole body. The feeling, however, changed considerably when it was discovered that in the very middle of the bill was a clause giving the introducer an absolute divorce from his wife. All this has now been stopped by prohibiting measures from containing more than one subject, and requiring that the title be descriptive of the matter contained.

Another device was that of introducing a bill at the very close of the session and rushing it through at a time when no one was in position

to give it consideration. A variation upon this practice was to introduce a measure doing a particular thing of an unobjectionable sort, and then, at a late hour of the session, and with as little furore as possible, to get it reported from committee with an amendment entirely changing its effect. The matter of late introduction has now been generally cared for by limiting the period within which bills may be introduced to a specific number of days, but the trick of late amendment is still available in most jurisdictions. Perhaps the worst of legislative tricks was that of passing measures by unanimous consent. You could do anything by unanimous consent of the legislature except amend the constitution. You could suspend any of the rules of the legislature itself, and pass bills in every imaginable kind of hurry. At the same time, procedure under unanimous consent possessed the great advantage of not putting anybody on record. Of course, every member was nominally recorded in favor of the bill, but he was always able to save himself before his constituents by saying there was no opposition—the bill passed by unanimous consent. Our constitutions nowadays provide that bills must be read upon three separate days and be in their final printed form for a specified time before passage. This blocks the use of unani-

mous consent for the purpose of avoiding all consideration, but the abuse of unanimous consent still remains considerable.

A very striking example of the recent use of these legislative devices came under the personal observation of the writer in the session of the New York legislature of 1905. Just a few days before the end of the session, a bill was introduced providing that hotels of over two hundred rooms might sell intoxicating liquors in spite of the fact that they were within two hundred feet of a church or school, within which limits the sale was at the time prohibited by law. The bill was advanced through various stages and passed the Senate without a vote in opposition. It passed the Assembly, being reported by the Rules Committee and put through all its various stages there with marvelous quickness. It developed that it was intended to permit the Gotham Hotel, just across 55th Street from the Fifth Avenue Presbyterian Church, to sell liquor. The measure had behind it the personal influence of United States Senator Thomas C. Platt. It was vetoed by Governor Higgins. Next year a measure was introduced by Senator Brackett of Saratoga extending the two hundred feet prohibition to public libraries as well as churches and schools. Along toward the end of the ses-

sion this bill was reported from the committee with an amendment which was not at all noted by the press, exempting from the whole provision hotels in existence on the first day of January of the year preceding. This bill had passed the Senate and was nearly through the Assembly before the change was discovered. It was then too late to organize opposition to it. It was, however, vetoed by Governor Higgins. The following year a bill was introduced, this time by a member of the assembly, from Brooklyn, excepting from the operation of the two-hundred-foot provision all churches any part of whose property was used for business purposes. It was claimed that this was to affect a situation in Brooklyn, but investigation showed that the Fifth Avenue Presbyterian Church owned a dwelling house immediately adjoining the church on Fifth Avenue which was leased to an art store. This bill again passed the Senate without serious opposition, but in the Assembly an earnest fight on it was feared and its sponsors endeavored to execute a clever flank movement. They brought the bill up on Friday. On Friday most of the members of the New York legislature go home. All business is transacted by unanimous consent, and the few of the old guard who hang about have so many little jobs of their own which they

want to put through that they seldom have the heart to say anything against anybody else's little job. Legislators show a great amount of charity in their dealings with one another—a high degree of "Christian" virtue. The bill would have passed on this occasion had it not been for the unexpected presence and still more unexpected opposition of one of the younger members. The bill did finally pass after a bitter fight and was again vetoed by Governor Hughes. This is a very good sample of the arts and devices of which skilled legislators are capable, as well as of the power and influence of a politician even at that time supposedly discredited with the people of his State.

Back of it all, however, lies the responsibility of the people themselves. They are careless in their choice of representatives. They demand practically nothing of them except that they dip deep into the pork barrel for the benefit of the district. The writer requested one of his students to address a letter to each of the eight Congressmen from California asking them whether their constituents had more interest in local appropriations or in the attitude of their representatives upon national issues. Seven of the Congressmen who replied to this very frankly admitted that their people cared nothing as to their attitude on national issues

provided they brought home the necessary appropriations. The eighth, who declared quite curtly that the people of his district were more interested in national issues, apparently told the truth for he was defeated for renomination in 1910 in a campaign in which he based his claim to the consideration of the voters upon what he had been able to do for the district. This, however, is the exception which proves the rule. There is no royal road to good government. It can be secured only by the eternal vigilance of the individual citizen. Each must be persistently and intelligently active in politics, not in the sense of being a candidate for office, but in that of constant watchfulness and criticism of the men chosen to represent him. Proper attention by each citizen to this matter will abolish the pork barrel, wipe out legislative chicanery, give us legislators of high character and good ability, and restore our legislatures to the position which they ought to hold. The powers which are exercised by our state legislators are the most important exercised by any agency in our governmental system. They include the whole realm of private and criminal law—practically everything which has to do with the relations of individuals to one another and to society. Legislatures ought to be bodies of first importance, not only

in respect of the powers they may exercise but in respect of the persons who exercise them, as well. The only way to this is through the people. That this problem of our American life will be met, there are many signs. Popular indifference is being in a large measure overcome. The people today are more interested in our government than they have ever been, and there is every reason to believe that they will make it really ours. There are some who profess to see in the failure of our American legislatures arguments against democracy. As a matter of fact, however, the history of our legislatures points in the opposite direction. Their misdoings prove that we have had too little democracy, not too much. By reason of the failure to evolve a system of legislative responsibility the people—the Demos—have never had a chance to rule. These defects in machinery are being corrected. The people are becoming actively aware of their duty. As in every great crisis in American life, the unspent brain of the American people is extending itself to meet every demand of the situation.

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## CHAPTER VI

### THE LONG BALLOT AS A CAUSE OF POLITICAL CORRUPTION

Students of politics in the United States have known for a long time that our ballot was too long. Comments have been made from time to time upon the impossible burden of determining the merits of numerous candidates for a multitude of positions and upon the confusion of state and city administration produced by electing one man to be the nominal chief of the administration while, at the same time electing several others, not necessarily in sympathy with the first, to conduct many of its most important branches. Any thinking man who has ever cast a ballot in state or city elections knows of the feeling of helplessness with which he faces the problem of discriminating between the candidates for the various minor offices. Such circumstances as the New York State election of 1908, in which Governor Hughes, really chosen by the people because of his high character and splendid boss-free record, was accompanied into

office by a crew of state politicians selected by the very men against whom he had made that record, have set people to thinking of the folly of a divided responsibility in state government. Of late we have had a Short Ballot Organization, including among its officers and members some of the most distinguished public men in the United States. Statesmen of such differences of opinion on other subjects as Taft, Roosevelt and Wilson agree in condemning the long ballot. The voter, at a state election in California, casts his ballot for some forty different offices, besides the important one of Governor. In New York City, in the four year cycle, according to Mr. Richard S. Childs, Secretary of the Short Ballot Organization, four hundred offices are filled by the vote of the people, and the number is even greater in Chicago and Philadelphia. Add to all of this the increasingly large number of constitutional amendments, bond issues, local option, initiative and referendum and recall propositions, in connection with which the people are called upon to exercise the franchise, and it is easy to see that we have placed upon our citizens a burden too heavy to bear. No man who does not make a business of politics can vote with genuine intelligence except for a very few of the most important officers.

The long ballot does not exist anywhere else in the world. The voters of England, France and Prussia, presumably as intelligent as those in this country, are not called upon to participate in any such tremendous selective process as that imposed upon our people. The English voter casts his ballot for a member of Parliament on an average of once in every five years. He votes for one member of the borough council every year, except in certain of the smaller boroughs which are not divided into wards, where he may have to vote for a larger number of members but where the limited size of the constituency pretty well guarantees that all candidates will be fairly well known to the voter. He also casts his ballot for two borough auditors each year, whose office is of no real importance—the actual auditing of accounts being done by public accountants chosen for the purpose. If he lives in a city of less than fifty thousand he will also have to vote for a member of the county council once in three years and, at intervals, for a member of the Board of Guardians. All this is on the supposition that he is a city dweller. If he lives in a rural portion of the country, he will vote for a member of the county council once in three years and for rural district councilors and for members of the parish council at varying intervals and in vary-

ing numbers.[1] The French voter casts his ballot for a member of the Chamber of Deputies once in four years; for a member of the General Council (of the Department) every six years; for a member of the Council of the Arondissement every six years; and for four or five members of the Communal Council every four years. In the smaller cities which are not divided into districts for the purpose of electing members of the Communal Council this number may be larger. The Prussian voter casts his vote for a Member of the Imperial Reichstag every five years; for a member of the Prussian House of Representatives every three years; for a member of the city assembly every year if he is rich and every three years if he is poor. If he dwells in the country he also votes for a member of the Circle Diet every three years. Briefly, in European countries the ballot is short.

The origin of the American system is to be

[1] The number of members of Boards of Guardans, District Councils, and Parish Councils are determined by the County Council, which also may divide parishes into wards according to the purpose of the particular election. This makes it impossible to state any general rule with regard to the ballot-burden of the people. It may be said, however, that in such small units as the Rural District and Parish, in which every one pretty well knows every one else, a long ballot is no evil —*vide* the New England Town where the annual meeting elects a list of officers of portentous length.

found in the great democratic movement of 1830 to 1850, the effect of which on party organization and methods of nomination to office we have already commented upon. It so happened that this period was one of very rapid expansion of the social and economic, and, consequently, of the political arrangements of our people. Many new offices had to be created, and some means had to be found of selecting persons to fill them. The original state constitutions had given the appointment of the few important administrative offices required under the simple conditions of the time to the legislature, or, in a few States, to the governor. The method of appointment by the legislature proved to be unsatisfactory. The general causes which led to the decline of the legislature led to its dealing with the places within its gift in a spirit of jobbery and corruption. At the same time there was some fear of entrusting to the governor of the State a great power of appointment. In the face of these difficulties, what was more natural than to entrust to the people themselves the task of choosing these officers. It was easy to assume that the people would be best represented by the men whom they themselves selected, and, in the belief that they were doing the democratic thing, constitution-makers and amenders provided for the elec-

tion of the principal state officers by the people. In consequence, the average American State elects not only a governor and lieutenant-governor, but also a controller or auditor, a treasurer, an attorney-general, a superintendent of public instruction, a surveyor-general or land registrar, and, in some States, a state engineer. This is a very conservative list, as in practically every State there are other elective officers more or less numerous filling a great variety of positions. The judges, also, who under most of the early state constitutions were elected by the legislature, came in like manner to be elected by the people. The same causes operated to increase the number of elective officers in cities and other units of local government. The only reason, in all probability, that the government of the United States was not affected in the same direction was the extreme difficulty of amending the Constitution of the United States. The government of the United States, therefore, stands alone among our numerous community of governments. As the result of earlier influences it is highly centralized, the number of officers elected very small, and, while the long ballot of our States and subdivisions operates to a considerable extent to deteriorate the personnel of the House of Representatives, that is not the fault of our national Constitution.

Although the elective principle was extended to so numerous a list of positions in the name of democracy, the long ballot has turned out to be anything but a democratic institution. A fair test of the democratic character of any governmental device may be presumed to be the question—Does it or does it not bring to pass the real will of the people? As a matter of fact, the people never really choose the minor officers for whom they vote. In the first place the citizen does not have an opportunity to make an intelligent choice. He is ignorant of the character of the position to be filled, and of the qualifications necessary to fill it. He is also ignorant of the extent to which the various candidates possess these or any other qualifications. They are simply so many names to him. The writer has made it a practice with numerous audiences to ask them how many knew the names of the incumbents of each of the elective state offices other than governor and lieutenant-governor. This is a more than fair test, because these men were the successful candidates, and may be presumed to have gained some notoriety by that success. They have been for some time incumbents of the places they occupy, a fact which brings them into contact with considerable numbers of people. The replies of the audiences varied from total ig-

norance to about twenty-five per cent. of knowledge. The only audience the writer found who anything like unanimously knew the name of a state officer was an audience of about two hundred school teachers in Los Angeles, practically all of whom knew the name of the Superintendent of Public Instruction. The voter is also confused by the size and complicated arrangement of the ballot. Under such circumstances, he naturally votes his party ticket straight on the assumption that, other things being equal, the men nominated by his party will better satisfy him than the men nominated by the other party. This is what President Eliot says he does, and it is what practically all of us are obliged to confess that we do. Of course, being ignorant, the voter is not in a position to criticise his party's choice either before or after election. Little information filters through the press concerning these minor offices, and the voter never really comes to know how his party choice fills the position. Those exceptional cases in which some startling malfeasance in office brings one of them into a sudden and unsavory prominence, go to prove the rule. Applying, then, our democratic test to the long ballot, we cannot escape the conclusion that, whatever else it may be, it is not democratic.

We still might have ground for consolation if by a means, however undemocratic, the offices were well filled. The political machines, however, which make up the slates of candidates, have, in general, filled the minor places badly. It is true that some of the state officers are splendid men, and that the great majority of them are passably honest, but taken by and large they are not competent. This is not to be wondered at. These offices not being subject to popular criticism, the machines and bosses are at liberty to put up for them whom they please. They choose the men who will do their bidding, or who will strengthen their organization. Now, the qualities of mind which make a man subservient to the bosses do not generally make him an efficient servant of the people. Neither is ability to win votes by bar-front or demagogic methods always synonymous with real administrative ability. We have, then, a situation in which these numerous elective offices furnish a means of political corruption, and, at the same time, give the State inefficient servants. The introduction of the direct primary will work no improvement. The people are no more competent at the direct primary to discriminate between the candidates for these minor offices than they are at the election. Indeed, the fact that they have to go

through the process of selection twice is a cause of still further confusion to them. In consequence, the men who prepare the pre-primary slate are in at least the same position as the men who in older times prepared the pre-election slate. Add to these evils disorganization of administration by entrusting it to a whole series of independently elected officers who are as likely to hate as to love one another, a consequence upon which we shall dwell at length hereafter, and we have a situation thoroughly discouraging to the lover of good government.

There is, however, light ahead. Our American cities, which Mr. Bryce said a few years ago were the one conspicuous failure of our governmental system, have been rapidly throwing off the shackles of the long ballot. The commission form of government, which obtained its great forward impetus through the success of the Galveston experiment, is the short ballot and little more. The reason for its success is its simplicity. For the first time, we have a form of government in American cities that is so simple that the responsibility for good or ill conduct in any city or department clearly attaches to a few individuals. The ballot is short. In Sacramento, which carries the plan to the extreme limit, the people choose one city councillor a year. This is a short enough bal-

lot to suit anybody, and if the people of Sacramento cannot elect a good city councillor once a year they deserve to have bad government. California, indeed, is taking the lead in the direction of the short ballot. The legislative session of 1911 reduced the number of state elective officers for whom each voter must cast his ballot, by three. The same legislature enacted a freeholder charter plan for counties which permits them to make the usual county administrative officers appointive by the board of supervisors. Los Angeles and San Bernardino Counties have already, under this provision, framed charters on the short ballot principle. Old Bishop Berkeley prophesied that westward the course of empire would take its way. Having flowed west to the apparently impassable barrier of the Pacific, the tide of human progress is turning back upon itself. The East can learn much from the freedom-loving, progressive West.

It would not do to leave this subject without offering for the reader's consideration a suggested short ballot plan. Here it is:

*First year:* President and Vice-President for four years. United States Senator for six years. Member of the House of Representatives for two years.

*Second year:* Governor for four years.

Lieutenant-Governor for four years. State Senator (in half of districts) for four years. Assemblyman for two years.

*Third year:* Member of House of Representatives for two years. (A United States Senator in this or fifth year.)

*Fourth year:* State Senator (in half the districts) for four years. Assemblyman for two years.

SPRING ELECTION

*Each year:* City Councilman for five years or Member of the Township Board for three years. Member of the County Board for five years. Member of the School Board for five years.

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## CHAPTER VII

### THE CORRUPTION OF POLITICS BY BIG BUSINESS

It is a mistake to assume that corruption in politics is ascribable to the peculiar bad-heartedness of those who profit by it. We have seen how the door to graft is conveniently shaded by the complex organization of our government. The corrupt politician is merely a person of no more than average conscience whom a tempting obscurity invites to wrongdoing. In this chapter we are to consider the buying end of the "business" of politics—the motives and methods of those who corrupt politics in the interest of what, in another aspect, is legitimate business.

The motive is privilege. Our governments, national, state and local, have in their disposition special privileges of enormous value. They consist in part of positive gifts, in part of exemptions from the burdens that others bear. To secure or maintain these benefactions and immunities is the motive which has led aggressive and ambitious big business to debauch our representatives. To rehearse the privileges

which have been sought and won regardless of the interests of the public would fill a book. Most important in the aggregate value of the gifts conferred are franchises—the right to supply public services for private profit by the use of the streets or the people's right of eminent domain. The excessive land grants in alleged aid of railroad building were the most signal and dramatic donations to private enterprise in the history of our country. The lending of credit to railroad, canal, and similar companies by state and local governments was only a few years ago so lavish and reckless that all our newer state constitutions forbid it. Water powers, timber lands, and mineral lands have been pursued more persistently than was ever the Fountain of Youth. And the story of the tariff makes the longest and blackest chapter in the whole great "book of jobs."

Of no less importance to business interests is freedom from restrictive legislation. American legislators have not been above introducing restrictive measures for no other purpose than to be bought off. A few years ago a member introduced into the legislature of one of our largest States a bill prohibiting race track gambling. It progressed swimmingly for a time. Then its introducer lost interest in it and it was allowed to die. The next year he built a

fine house, ostensibly on the proceeds of a country law practice which had been neglected for the small salary and large expenses of a state senator. This type of legislation is known as the "strike."

More frequently our legislative bodies, with the very best intentions in the world, pass measures so unscientific and so destructive of the legitimate interests of Capital as to make the use of any means of prevention seem justifiable. On the other hand, it is true that many of our great corporations meet with the same hostility and fight with the same ardor the wisest and best-considered measures for the protection of the people. When a powerful organization has been created for the purpose of legitimate self-protection, there is a well-nigh irresistible temptation to call its power into exercise for illegitimate purposes if occasion arises. Big business also has, of course, an interest in a lax enforcement of the laws limiting its activity. It therefore seeks to control the administrative departments of government, in which effort it is, as we have seen, greatly aided by our usual long ballot. The characteristic relation, however, between big business and government, is the relation which it sustains to the law-making body—the legislature; and it is upon the legislature that the

corrupting influence of big business has been most potent.

The methods of this control have undergone progressive modifications. The old method was that of direct action upon the legislature itself. This involved the maintenance of a familiar institution, the "lobby," consisting of one or more representatives of each "interest" concerned. Popular imagination has pictured them as haunting the halls of legislation. They made it their business, quite legitimately, to keep their employers in touch with the progress of matters in the legislature, and to present their views to committees and individuals. They became familiar also with the character of each member and with the influences that might be brought to bear upon him. So far there was nothing necessarily evil in their activities. No more complete system of keeping track of members of a legislature was ever employed than that used by the women's lobby which passed the women's suffrage bill through the 1913 session of the Illinois legislature. The old "lobbyists," however, did not stop at the point of legitimate argument or with the use of the pressure of public opinion. They had recourse to any and all means to control the votes of the members. They were shrewd, rich in their knowledge of human nature, and

shameless in serving the interests of their employers, and sometimes more than incidentally their own.

Certain lobbyists belonged to the regular navy of the greater interests. Others were pirate craft preying right and left on the credulously avaricious smaller men of business. So great became the popular reputation of the omnipresence of "influence" in legislative affairs, that many a man counting himself wise in business, corrupt in motive, but innocent as a child in the apprehension of things political, bought at a high price an "influence" which did not exist. Vast amounts of money paid to lobbyists to be used in securing votes for or against measures never passed out of their hands.

Those were the times of high living among legislators, and if a member could be swayed by wining and dining, or by pampering his appetite for any kind of vice, the lobbyist took advantage of his weakness. When the passage of an Anti-Race Track Gambling Bill was impending in one of our state legislatures, a prominent member of the upper house was engaged in a poker game by race-track men and so industriously plied with liquor that he never came to his senses until the vote had been taken. In another State the Librarian of the State Library maintained a well-stocked buffet in his

office at which thirsty legislators might regale themselves. A kindly, well-trained man, the Librarian would offer to new members, beside liquid refreshment, help in the preparation of speeches and the drawing of bills. It was not long before they were caught in the invisible coils of obligation and delivered, bound hand and foot, to a great corporation. If the legislator was susceptible to flattery, he was flattered; if he was susceptible to bribery, he was bribed. It was part of the lobbyists' business to know the price of men and never to overpay. If a man could not be influenced by the direct use of money, contributions to his campaign fund or jobs for his friends in the service of a corporation were made to take the place of a positive money payment. If a great popular uprising swept over the country, the big business interests habitually bent to the storm. They never asked their friends in the legislature to commit political suicide, and they were always willing for a man to vote against them on a particular question if it were clear that he must do so in order to retain his place and his opportunity for serving them in their other needs.

The days of wild living on the part of legislators have pretty well gone by, probably forever. It is no uncommon thing in a state cap-

ital these days to hear the bar-tenders and the dive-keepers mourn over the decline of legislative life. The modern legislator eats prepared breakfast food and drinks buttermilk. He haunts the cafeteria rather than the grill room. The corporations still maintain representatives at the capital, but their business is more particularly to watch the course of legislation and warn their masters of what is to follow. Almost the only great lobbies of the present day are those conducted by the numerous reform agencies. Sometimes, too, the amateur activities of some city council or chamber of commerce crowd the capital with buttonholing badge wearers. The representatives of big business are conspicuous by their absence except, perhaps, at Washington. There, the extraordinary stimulus of tariff revision will still draw out an old-time gathering of the clans. More typical is the case of a great financial interest in the State of California, which to present certain important considerations to the legislature,—a matter which in past times would have required the service of a host of attorneys and retainers,—sent but one man to Sacramento who merely appeared before the committee concerned, and left immediately thereafter.

The outright use of money to buy a legisla-

ture or a city council is becoming an exceptional practice likewise; a crude relic of the time when the control of politics was not thoroughly understood. In these days big business still controls legislative action and by the use of means no less sinister than formerly. It works, however, through ways less obvious to the public. Its control is now secured through the political organization or machine upon which the individual legislators depend. Big business enters into close alliance with the boss. Indeed, it is the possibility of such a connection with big business which supplies the chief incentive to attain bossship. Even where the element of personal corruption is less evident big business secures party gratitude by campaign contributions. Note, for example, Miss Tarbell's explanation of the influence of Mr. William Whitman of Boston in securing the infamous Schedule K of the tariff of 1909:

"'What made Mr. Whitman so powerful? Probably we shall not go far astray if we assert that the real reason is that for many years he and his worsted friends have been one of the main financial reserves of the high protection wing of the Republican Party in New England, and that in return they have got what they asked for. That is political ethics—or etiquette. Ever since 1888, it has been a settled and openly expressed principle in political circles that

your protection shall be in proportion to your campaign contribution.' "

Furthermore, our standards of business and political ethics have made it possible for men representing big business in their own persons to become the bosses of great States without any self-acknowledged loss of personal honor and to use their positions to benefit themselves and others of their class. The individual member of the legislature under this system rarely profits financially for casting a corporation vote. The boss may profit financially or politically, but he does not divide with his henchmen. One rather tragic case arose in connection with the race track bill to which we have already referred. A young man of good parts having given assurances to the people of his district of his probable adherence to the bill was ordered by his boss to vote against it. True to the discipline of his organization he did so, although his "No" was a self-pronounced sentence of political death. He never got a cent for his sacrifice. If there are any pickings for the purchasable member of the legislature these days, they are from the small fry of corruptionists—not from the big business interests. It was commonly reported prior to 1911 that a seat in the California legislature was

worth $3000. They are no longer capitalized at any figure.

The new method is, from the corporation standpoint, infinitely superior to the old, which was fraught with the danger of exposure and prosecution. By processes rarely illegal they now become an integral part of the organization which determines the choice of legislators. They thus control the product of legislation at all times except when a party organized upon principle drives the machine from its stronghold and puts into power real servants of the people.

There is scarcely a citizen of our country who has not heard the expression "The System." The great majority of them, however, have only a very hazy idea as to what the expression means. It is variously used, but most significantly to describe a condition of combination or coöperation on the part of great financial enterprises to affect the operation of government. There is little evidence that there is anything formal about it. It is simply an understanding among the men who look out for the political interests of the big corporations. In the old days their representatives in the lobby pooled their interests, and by an alliance made their control over the legislature more certain. In these days, the combination is normally effected

through undiscoverable channels, and with no possible implication of the individual officers of the corporations, but is none the less effective.

Frequently, when some one big corporation has secured the control of the politics of a State, or of a city, the other corporations, instead of dealing directly in politics, deal with this major corporation, and it becomes a clearing house for the political activities of all the big business interests of the community. An excellent example of this was the situation which prevailed with regard to the Southern Pacific Railroad in the State of California prior to the advent to power of the progressive administration of Governor Hiram Johnson in 1911. Any one who wanted legislation went to the representative of the Southern Pacific, who disposed of legislative favors with almost regal lavishness. The policy of this great corporation was, once its own demands were satisfied, a fairly liberal one. It was friendly to education and gladly acquiesced in large appropriations for state institutions. It is not uncommon, therefore, to find high-minded people, now forced to run the gauntlet of the whole legislature, shamefacedly sighing for the simplicity of the "System."

Another aspect of the political power of the great corporations, and one which has been too

little commented upon, is their power to control votes. Every such corporation employs vast numbers of men, over whom they can exercise a great deal of influence. It is not uncommon for such corporations to order them to vote in a particular way, and while it is impossible to say to what extent the order is obeyed there can be no doubt but it has a very material influence on the result of many elections. More commonly the corporations effect their purpose by inducing their men to stay away from the polls, by which means a check-list test can be applied to their loyalty. There was at one time grave danger that this power to control votes would increase. It seemed as if the corporations were beginning to see the economic and political advantages of sharing with their employees some measure of the plunder which they wrested from the people. If they had generally adopted the policy of making their employees somewhat better off than other men of the same class, they might have made the interests of the employees their own. A few years ago it appeared highly probable that within a short time we should see great corporate interests in which the laboring men and the capitalists presented a united front, politically, to every effort to regulate or control them. Like the robber barons of feudal times, the heads of these corporations

would have gathered about them great hosts of retainers who would have cast their votes at the beck and nod of their superiors. This process of amalgamation of the interests of masters and men was being distinctly, if unconsciously, facilitated by the perfection of trades unionism. A powerful union dealing with a corporation in receipt of swollen profits could frequently force concessions which had the effect of making it a partner in the corporate success. The most notable instance of this partnership was between the glass "trust" and the glass workers where a hard and fast agreement for mutual aggrandizement was reached. Something of the same sort, less formal but more permanently successful, has taken place between some of our great railroads and the powerful unions of their employees. Trust, and Trade Union, both in their nature monopolistic, appeared to be natural allies, and the passage of time seemed to be bringing a clearer comprehension of this fact to both.

It was, however, mere seeming. Capital in the great trustified industries has taken advantage of a coincident improvement of machinery and the flood of cheap labor from Eastern and Southeastern Europe to break up trades unionism. Trades unions are now only sporadic in the fundamental industries of our

country, except that of transportation. The trusts have been blind, perhaps, to the dangers of disassociating their interests from those of their employees. Perhaps they have deliberately tempted the deluge. Suffice it to say that at the moment when their top-heaviness, lack of efficiency and reckless financiering are threatening their economic supremacy, they stand without a friend politically, unless it be a mercenary and sycophantish press. They have alienated the middle class by their senseless exactions. Their employees are ignorant, hard-pressed, half-starved proletarians among whom—and small wonder—the revolutionary doctrines of syndicalism spread like wildfire.

There is in modern society a fundamental antithesis. Politically speaking, society is democratic; economically, society is feudal. So far, feudal economic society has by means of the corrupt methods we have discussed in this chapter pretty well dominated our political democracy. The supreme test of democracy will be to bring under its control rebellious economic society. If it cannot do so and at the same time preserve the individual rights of property; if it cannot do so by regulation and restraint—by rate fixing and service compelling—there can be but one result—Socialism. Happily, economic feudalism is weaker politi-

cally than it has ever been since the introduction of machinery. It is beginning to disintegrate as a means of production. There is hope for democracy.

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## CHAPTER VIII

### THE CORRUPTION OF POLITICS BY ORGANIZED VICE

At the root of the problem with which this chapter deals lies the old distinction between vice and crime. Crime is conduct so obviously detrimental to society that there is an absolute consensus of opinion concerning its prohibition. Crimes are clearly offenses against society, which society has no hesitation in using its utmost force to suppress. Vices, on the other hand, are primarily harmful to the people that practice them, and only secondarily injure society. Certain of them like drunkenness, the use of certain drugs, gambling and the practice of sexual irregularity have come to be recognized as inimical to society, and to be the subject of legal restrictions. Only to a limited extent have vices been prohibited as such, and the laws which in certain States make gambling, fornication and adultery criminal have not been noticeably effective. In general the effort of society has been to regulate or stop altogether the business of ministering to these vices. Upon this subject there is no consensus

of opinion. No policy with regard to these vices is agreed to even by a large majority of the people. Even when a majority does acquiesce in some particular mode of treatment, the support of the measure adopted is frequently so lukewarm as to make its enforcement a matter of great difficulty. It is indeed very much easier to the average citizen to endorse the enactment of a law than to be active in his desire for its enforcement. We are rather prone as a people to aspire to very high ideals in our laws and then to resent being bothered about their execution. Add to this peculiar insincerity numerous very real differences of opinion, and such a substantial consensus of opinion as is necessary to the enforcement of any law is obviously impossible. We have already in the first chapter of this book commented upon the opportunity for graft which is afforded by the difference between the legal and the actual moral standards of the people. This opportunity is, of course, greatly magnified where the law has, even theoretically, no adequate backing. It need not surprise us, therefore, if the effort to regulate or prohibit the purveying of these vicious pleasures is a fruitful source of political corruption.

Before we can understand the spread of the infection of our political institutions from this

source we must realize the relation which exists between the three great vice purveying industries. The trade in women, vast and enormously profitable as it is, has very little direct political power. The number of men engaged in it is small and though the introduction of woman suffrage will greatly increase its voting strength, it will remain relatively weak. The business is so unspeakably vile that it can not raise its voice in its own defense and there are few indeed among the general public so depraved as to give it open aid. There is no politician so corrupt that he will not record an emphatic "Aye" on any White Slave bill. The professional gamblers are not very numerous and, while their business is not so utterly beyond the pale as that of the pander, it finds few advocates. The last great battle against the gambling fraternity on the subject of race track betting showed no defense of gambling, the only argument of the gamblers being that their trade was necessary to racing. In the liquor traffic, however, we come to a very different grade of business. Here we are dealing, not with a business ministering to a limited class of the depraved, but with a great industry which supplies in vast quantities a commodity desired by a proportion of the normal citizenry of the country. There is in their opinion absolutely

nothing wrong in the properly regulated sale of liquor. Relatively speaking, then, the liquor business has the advantage, not only of prodigious wealth, but of comparative respectability. It has other great sources of political power of which we shall speak presently, and it is in the position, if its interests are the same, to protect the other vice-mongers along with itself.

Now, little as he likes to acknowledge it, the saloon owner is very closely connected in interest with the owner of the gambling den and the brothel. In the first place, liquor is in great demand by the patrons of the latter resorts. Men must needs inflame themselves with strong drink before the grosser forms of madness can be enjoyed. Vast quantities of liquor are sold in such places at exaggerated prices and these places are one and all profitable customers of the brewers, distillers and wine merchants. Furthermore, the conditions in the liquor business are such today that it is very difficult for the saloonkeeper to run a decent saloon if he desires to. In times gone by the liquor store with its stock and fixtures belonged to the saloonkeeper, and the profits of the retail trade made him a fat, rich and near-respectable citizen. At present probably very close to ninety per cent. of all saloons are not owned by their

nominal proprietors. In the eager rush for an outlet for their several products, the brewers and distillers have been willing to finance any capable-appearing young fellow who wanted to start a saloon. They rent the premises and fit them up, add a stock of liquor, and secure themselves by a chattel mortgage. Under this system the number of saloons has been multiplied out of all proportion to the genuine demand for them, and the profits of the retail business very much reduced. In these days unless the saloon is in an exceptionally good location, or unless the saloonkeeper is an exceptionally good hand with the boys, there is little more than wages for the proprietor. Face to face every month with interest payments, principal payments, and the monthly bills for beer supplied by the financing brewery, it is no wonder that the struggling drink dispenser finds his scruples against allowing gamblers and evil women to ply their trade in his rear room breaking down. The brewers and distillers have lately professed to be very much shocked at the conditions prevailing in the retail liquor trade and have taken some steps to reform the saloon. Until, however, they reduce the economic pressure on the poor saloonkeeper there will be no great improvement in the morality of the saloon. The intimacy between the purveyors to our three

great vices is a very close one, and it will take something more than protestations to open up a gap between them. At present, as we shall see, it is the saloon machine which champions, of course without unnecessary fanfare or parade, the other vices in distress.

We have already noted that the liquor business possesses that very essential source of political power, vast wealth. In this respect it bears the same relation to politics that is borne by any of the great corporate influences of the country. Beyond this, however, the saloon plays a part of the first importance in the working of machine politics. It is indeed the center around which every such machine is built. Despite all that the extreme opponents of the saloon may say, it is the only existing social center for the great mass of the people. It is in a very real sense the poor man's club. In it congregate the men of the neighborhood, and if this were the whole story it would be evident that the leader or organization which controlled the saloon would control the best of opportunities for coming into personal touch with the electorate. The saloonkeepers and their bartenders are in direct proportion to their success "good fellows." The very qualities which draw custom to their bars make them natural leaders among the simple men who frequent

them. The temperance enthusiast who pictures the bar-keeper as an ogre is vastly deceived. He does not wear the brand of Cain or any lesser criminal on his brow, and he possesses many of the more elementary human virtues. He has an opportunity to do many small favors for his customers such as cashing checks and giving limited credit. He not only more or less influences all his regular patrons but attaches to himself a few hangers-on who can be delivered absolutely as the saloon-owner directs. It is natural that a machine of the corrupt order, which is kept together by something other than an appeal to principle, should find the petty officers of its organization among saloonkeepers. As the more influential bosses are simply men of the petty officer class who have in some way gained control of the other petty officers, the higher as well as the lower officers of the machine are saloonkeepers or ex-saloonkeepers. There are exceptions, but this is the rule. Being thus strong politically, the friendship of the saloon is sought by politicians of a larger sort, and it grows still stronger as the result of the alliances thus made. It is therefore possible for the saloon to protect its interests and those of its allies not only because of its economic strength to influence the political machine but because it is *the* machine itself. This is

what makes the corruption of politics by the saloon so insidiously effective.

It is not difficult, therefore, to realize that there is a close connection between the political activities of big business and the liquor traffic. Just as the rich brewer dislikes to acknowledge his relation to the lawbreaking joint, so the corporation magnate hesitates to own association with the great political power of the saloon. His control of politics, however, is based upon the machine which, as we have seen, is so largely dominated by the saloonkeeper. In almost every struggle the saloon and the great interests are allies. Hence that otherwise unexplainable reluctance of certain pillars of the church and ornaments of society to lend the influence of their names to attacks even upon the grosser vices. This explains why so many men of substance are so insistent that the preacher devote himself to the "simple gospel." To get nearer home than Judea of two thousand years ago savors to them of danger to their inheritance of an efficient and venal machine. On the other hand the saloonkeeper is seldom progressive in his views of economic and political questions. Reform of any sort spells terror for him. He is a natural conservative, agreeing in all points with those representatives of

corporate wealth who pin their hope to things as they are.

We may now consider the operation of the great political force of the saloon in protecting the several forms of vice purveyance from the effect of restrictions concerning which there is no popular agreement. In defeating hostile legislation and in promoting that which favors their business and that of their allies and dependents, the saloon operates much as does big business, sometimes by the use of money and other influences directly on the members of the legislature, but, more normally in these days, by means of its control of the machine. In the same way it secures the complaisance of the local authorities to the constant infringements of the law of which almost all saloons are guilty. Moreover, a very interesting situation results where these laws which are broken are not an expression of the real desires of the community. This, as we all know, is frequently the case, especially in large cities. It is the situation logically expected to arise from that proneness of the American people to lend themselves to the enactment into law of general moral aspirations without any accompanying earnest desire for their enforcement. Where the attempted repression goes beyond the real desires of the com-

munity, it is clear that no serious political consequences can attend upon an attitude of indifference as to the enforcement of the law on the part of public officials. If the law is enforced, no one can truly blame the zealous officer who is responsible for it. This situation is the cause of that police corruption which is such a widespread phenomenon in our American cities. The police know of practically all the violations of the law committed by the establishments which minister to the various forms of vice. It is an easy thing, therefore, to say to the law breaker in the laconic dialect of graft, "Put up or we'll shut you up." Sometimes the tribute thus wrung from these wrong-doers is the vulgar little perquisite of the patrolman on the beat. Sometimes it is shared with the officials "higher up." Sometimes an important and responsible official, a Lieutenant Becker for example, has it collected for himself directly. Every dealer in vice, from the simple saloonkeeper who wants to sell a few glasses of beer on Sunday to the proprietors of the dives of the unspeakable degree of infamy, are subject to this form of blackmail. Even when the saloon as a political force is dominant in the city, it, in general, has to put into office such a dishonest set of grafters that they will not play fair even with the machine which made them.

It is also unfortunately true that even the strongest and most righteous head of an administration can do next to nothing to prevent the petty grafting of the individual members of the police force where the latitude of local public opinion on the subject of law enforcement is of such degree. So long as a discrepancy exists between the face of the law and the hearts of the people there will be graft. The frightful police corruption of New York which recently shocked the whole country has long been no secret to those who have been familiar with the attempted regulation of vice in that city. It grew out of the difference in moral standard between an up-state legislature and the public opinion of the metropolis. In particular the Sunday closing of saloons for which the famous Raines law provided was a policy none too popular among the people of the city. It was genuinely enforced by Theodore Roosevelt, then Police Commissioner, for one Sunday, at the expense of calling the force pretty largely away from every other duty. For a short period he kept up the honest effort to enforce it. No other police commissioner has ever even pretended to do so. The thousands of saloons have all the while paid tribute to some one or other. The same is true of the gambling houses, the disorderly hotels, and even of the

individual street walker. We can never hope to put an end to this system until we are ready to recognize that a law worth passing is worth enforcing. If it is for the best interests of the whole community that the state legislature should enact laws distasteful to large sections of the State, the only logical thing to do is to provide state machinery for their enforcement. To enact such laws and then leave their enforcement to the officers chosen for the purpose by the locality is the rankest folly. It means the loss of the benefit of that uniformity of policy which was the excuse for the adoption of the law. It means also graft *ad libitum*. How long will we remain hypocrites!

All this suggests that these vicious practices which threaten the integrity of our people are not to be met only by such regulative or restrictive measures as are agreed to by all the people, or as to which the majority proposes honestly and thoroughly to have its way. They can, however, only open the way for real constructive reform. These direct attacks must be supplemented by flank movements. Political reform and honest party organization must take away from the saloon and its associate vices their political power. Public provision for clean recreation in which the leisure time of the

people may be absorbed must take away their patronage, weaken their financial resources, and at the same time diminish their social significance. The leisure time of the rising generation is happily taking more and more the attention of our moralists and social workers. Toil, within reasonable limits, is not a corrupting agency. At worst it merely produces such bodily fatigue as predisposes to harmful indulgence in certain forms of pleasure. It is in idle time that the lure of vice is felt. Let us have more playgrounds, more baths, more gymnasiums, more libraries and reading rooms, more neighborhood centers, more regulated dance halls, more well censored moving pictures, more rational amusement of every kind, and we will have in direct ratio a reduction of drunkenness, gambling and social vice.

It sometimes seems as if these diseases of society inevitably infect every hand that touches them, no matter what the motive. We must not, however, be discouraged into an abandonment of the effective restraints which law can place on vice. There is a thorough method of antisepsis—to bathe the government in high moral purpose that puts right before purse or party. Thus the foul places can be made clean.

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## CHAPTER IX

### THE INITIATIVE, REFERENDUM AND RECALL

We ordinarily think of the initiative, referendum and recall as the trilogy of modern progressivism. They are generally regarded as recent innovations in government. As a matter of fact, however, they all have histories, and have all been more or less familiar instruments of popular government for a considerable time. The referendum is the most ancient. We find it in use from the beginning of the Swiss Confederation, in which the delegates of the several States determined matters, not finally, but *"ad audiendum et referendum."* Their decision went back to the people of the cantons they represented for approval there. With the introduction of representative institutions in Switzerland, early in the nineteenth century, the referendum was reinstated, this time as a means of check on these representative governments. The Swiss, unused to representative principles, distrusted their legislators, and could be reconciled to them only by reserving to the people the right to veto by popular vote

the laws passed by them. In some cantons the referendum was obligatory and applied to all laws; in others it was optional, being applied only to those laws concerning which a referendum petition was filed. Later, the government of the Confederation adopted an optional referendum on constitutional matters.

In the United States, in the meantime, and quite independently of Switzerland, the referendum had been put into practice. When the constitutional convention of the new State of Massachusetts had completed in 1778 the draft of its constitution, it submitted it to the people for their ratification. This was in strict accordance with the prevailing theory of government, which held that all powers were derived from the consent of the governed, and as the constitution was to be the fundamental law or compact on which all other arrangements were to be based, it was only proper that it should be adopted by the people themselves. This constitution of 1778 was defeated, but in 1780 a second constitution was submitted and ratified. Since that time it has gradually become the custom in all our States to submit to the people for their ratification, not only new constitutions, but constitutional amendments as well. The custom grew up also of submitting to the people other propositions of a quasi-constitutional na-

ture, such as the issuing of bonds pledging the credit of the State or fixing the site of the state capital. The principle was also extended to local governments. The organization of new counties, the ratification of city charters, the approval of local bond issues, the granting of franchises and many other similar matters were frequently made the subjects of popular vote. The most striking instance of all is to be found in the local option liquor legislation which prevails in most of our States. Under this system the question of prohibiting the sale of intoxicating liquors is settled by popular vote, and by this means upwards of two-thirds of the territory, containing more than one-third of the population of the United States is "dry." It would then be distinctly incorrect to say that the referendum is a new institution in the United States. It is only its application to the general laws of state legislatures and every day ordinances of city councils that is new.

The initiative is, comparatively speaking, a modern device in government. It was developed in Switzerland in the early part of the nineteenth century to meet fully that sense of distrust which was partly expressed by the adoption of the referendum. The legislature, as well as doing things which the people would not have done, might leave undone things which

the people would have done. Hence it was necessary to endow the people with power to propose legislation. The Swiss constitutions usually provide that a measure proposed by popular petition shall be submitted first to the legislature to give it an opportunity to adopt or reject it. In some cantons measures are submitted in final form, in others, only the general terms of the proposition are put forward by the people, the detail drafting being left to the legislatures. If rejected, however, the measure must be submitted to the people, and if passed by them it becomes a law. In some cases the legislature is permitted to propose alternatives to be voted on at the same time as the original proposition. Our only experience with the initiative in the United States has been with regard to local option liquor laws, some of which provide for the submission of the question to the people upon a popular initiative petition. This has somewhat familiarized us in the United States with a portion of the legislative policy of a locality, at least, originating with the people themselves.

The recall is nearly as ancient as the referendum. Its origin is buried in more or less obscurity. There is evidence that it has existed time out of mind in Switzerland, and several of the cantonal constitutions now make

provisions for it. There is no record of its use, at least in modern times, annual elections leaving little room for the recall. It has been alleged by some writers that it existed in the Articles of Confederation under which our national affairs were directed from 1778 to 1789. Those articles provided that the representatives of each State might be recalled by the legislature which had elected them. This, however, differs very markedly from the recall as we now understand it. The delegates of the Congress of the Confederation were little more than representatives of the States as units; more on the order of diplomatic agents of independent governments than members of the representative body of an organic union. They were subject to recall, as all such agents are, by the power that appointed them. The fact that their functions were revocable grew out of the nature of the assemblage, not out of the desire to make them amenable to the people.

The first appearance of the recall in American government was in the Los Angeles charter amendments of 1903. It went into the Los Angeles charter along with the initiative and the referendum, the principal proponent of the scheme being Dr. John R. Haines. Dr. Haines alleges, and there is no reason to doubt his word, that he had no knowledge of the Swiss

recall, and that he simply worked the matter out in his own head with nothing but the provisions in the Articles of Confederation to go upon. It has been asserted by a well known writer on such subjects, that the recall provision of the Los Angeles charter is almost identical word for word, with that of the cantonal constitution of Schaffhausen. A glance, however, at the excerpts from that constitution and the charter of Los Angeles will serve to free Dr. Haines from a charge of slavish copying. He is entitled to the credit of introducing to American government a highly original and practically framed addition to the mechanism of democracy.

Contrary to the usual belief, the recall is the least radical of all these institutions. It does not at all alter the usual method of making laws and it is entirely consistent with the general theory of representative government. Indeed, the existence of the recall is logically necessary to the thorough democracy of a representative government. Under the usual system of electing representatives for a definite period, they are subject to control only at the moment of their selection. Of course, the desire of holding office, and, to a certain extent, the honest fear of public opinion will cause them to represent faithfully the wishes of their constitu-

ents, but at any one moment they and not the people control the situation. To be thoroughly democratic, the organization of the powers of government must give to the people potential authority at all times. Thus, the recall is logically the last word in representative democracy. If, of course, the recall were to be used extensively, it might result in an extreme disorganization of government. There is no evidence, however, that it will be so used. It is never used in Switzerland, and in those American cities which, beginning with Los Angeles, have adopted the recall, and which now number nearly three hundred, there have been few instances of its use. In Los Angeles itself, two persons have been made the subject of recall: a councilman accused of corruption, and a mayor accused of intriguing with the purveyors of vice. The councilman was recalled and the mayor resigned before the recall election was held. In Dallas, Texas, two separate recall elections were held to recall the members of the school board, the difficulty growing out of the dismissal of a popular principal of the high school. A subsequent effort to recall the members of the city council and mayor was defeated by the circulation of a counter petition which was promptly signed by more than a majority of the qualified voters of Dallas, upon which gentle

hint the recallers ceased their operations. In Seattle, Mayor Gill was recalled because of his attitude with regard to an open town, and in Tacoma, a serious controversy resulted in two recall elections which were partially successful. In the city of Berkeley, California, an effort was made to recall the school board in the Spring of 1912 because of their refusal to continue in office a very efficient superintendent of schools.[1] It was pretty clear that the school board had made a serious error of judgment in refusing to reëmploy the superintendent. The people of Berkeley held that the board of education had been elected to choose a superintendent, and that it was not proper to recall them for a mere error of judgment in carrying out this duty. The recall was defeated by a decisive majority. From our experience with the recall, it is plain that it can ordinarily be successfully used only in those cases where the officer who is sought to be recalled has been guilty of corruption or some serious moral dereliction.

The recall as a state institution is, practically speaking, unworkable. The difficulty of securing signers to a recall petition is very considerable, men hesitating to put down their names

[1] The writer took an active part in this campaign in advocacy of the recall.

upon such a document which is open to public inspection; and the consequent trouble and expense of securing a petition of the requisite size with signers distributed over the State puts an almost impassable obstacle in the way of its use. The only instance in which it can be used will probably be where an official has committed some act of malfeasance so palpable and so atrocious as to create a practically unanimous public demand for his removal. With regard to the recall of judges, we shall speak in a succeeding chapter.

Not only is the recall likely to be used sparingly, and with a proper degree of conservatism, but it is serving a very useful purpose in reconciling the people to that concentration of power and responsibility which seems essential to the proper working of democratic government. It is doubtful if the people would ever have become willing to adopt the commission plan of government, which delivers the city administration without reserve to a board of five men, if it had not been for the recall. Galveston adopted the commission form of government in 1901, and Houston in 1905, but it was not until Des Moines joined the initiative, referendum and recall to the commission form of government that it began to be looked on with favor throughout the United States. People

recognized the wonderful success of the new plan of government in Galveston, but wise old people still shook their heads and said, "It is dangerous. It is un-American to give so much power without any check." The recall will play the same part in consoling the people for the shortening of the state and county ballot and to further concentration of administrative power.

The referendum is, as we have seen, an already familiar institution. Its existence, also, is not at all inconsistent with the theory of representative government. It is, at most, a veto upon measures which must in every instance have originated with the legislature, and which have received there at least some degree of discussion and modification. The very existence of such a check is likely to prevent the necessity of its use, and, in consequence, it will in all probability be used only in certain exceptional cases. A consideration of the Oregon ballot of 1912, shows that in the State which has been distinctly the most active in the use of direct legislation, of a total of thirty-seven propositions only nine were referendums. Six of these were in the nature of constitutional amendments on which a referendum was obligatory, only three being ordered by a petition of the people. California in her first year of

the referendum on state laws had on the ballot at the November election of 1912 three referendum propositions. These three were, in reality, only one, the bills as passed by the legislature having been companion measures.

Of the forty-eight propositions submitted to the voters of California in November 1914, but four were referenda by petition. In those municipalities in which the people possess the privilege of the referendum, it has been sparingly used.

In general, we may say that the referendum produces whatever result it accomplishes as a simple *in terrorem* without the necessity of its actual application. Not only does its existence ward off the passage of bad laws but it tends also to eliminate undesirable methods of influencing the conduct of the legislature. What profit is it to control the legislature so as to be able to pass bills in the corporation interest if on a possible referendum to the people those bills may be defeated? The corrupt legislator has, under the referendum, no merchantable commodity of which he may dispose. The referendum, too, has to play, along with the recall, an important part in reconciling our people to the centralization of authority in a few hands, and to the abolition of the traditional checks and balances of government.

When we turn to the initiative we reach an institution of a very different character. Strangely enough, in the California campaign for the initiative, referendum and recall, it was the recall which drew all the fire of the opposition. The initiative was ignored, while the horrid radicalism of the recall was frequently referred to. As a matter of fact, however, the initiative is by far the most radical of the three institutions we have been considering. In the first place, it practically abolishes the constitution of the State, because, under it, constitutional amendments may be proposed and adopted just as easily as ordinary laws. The constitution is reduced to nothing more than a set of rules for the legislature. To the mind of the writer, this is no serious objection to the initiative. He firmly believes that, for our state governments at least, the day of the rigid written constitution has gone by, and that what is needed is such flexibility in the forms and powers of our state governments as will enable them to cope effectively with rapidly developing economic conditions.[1] It would be useless to deny, however, that an institution which practically sets aside the restrictive character of the state constitution is radical; far more

[1] Another phase of this subject is discussed in Chapter X.

radical than either the recall or the referendum.

Furthermore, it appears almost certain that the initiative will be used extensively. It has not been much used in city government, but this is to be readily accounted for by the fact that city government is not so much concerned with the adoption of general policies as with their administration. It is the State which holds the great bulk of the lawmaking power in its hands, and the initiative seems in a fair way to become a monstrously active principle. The following table shows the comparative use of the referendum and initiative in Oregon since the introduction of these measures into the Constitution of that State:

| | Initiative Measures | | Legislative Measures | |
|---|---|---|---|---|
| Year | Proposed by Petition | Adopted | Subjected to Referendum | Adopted |
| 1904..... | 2 | 2 | 0 | 0 |
| 1906..... | 10 | 7 | 1 | 1 |
| 1908..... | 11 | 8 | 4 | 2 |
| 1910..... | 25 | 8 | 1 | 0 |
| 1912..... | 28 | 8 | 3 | 1 |
| Total..... | 76 | 33 | 9 | 4 |

In the few years that the initiative has been in force in the State of Oregon, the number of measures has steadily increased until in 1912 there were on the ballot twenty-eight propositions proposed by initiative petitions. California, at her first election after the adoption of the initiative, had three initiative propositions and three referenda by petition, all of which were defeated. In 1914, the people of California were called upon to vote upon forty-eight measures. Twenty-two of these were constitutional amendments submitted by the legislature. A sad commentary upon the length and complexity of our more recent State constitution. One was a concurrent resolution calling a convention for the revision of the constitution. Four were bond propositions submitted by the legislature. Four were referenda by petition. The remaining seventeen were initiative measures. Six initiative and three referenda by petition were adopted by the people. An initiative measure is the easiest way in which the propaganda of any ism can be brought decisively before the people.

In order to appreciate the effect of this wide use of the initiative, we must turn back for a moment to consider again the method by which multitudes exercise volition. Laws do not originate spontaneously even with limited

bodies such as our legislatures. In every case they are suggested to the legislature by the member who introduces the bill. In a large number, perhaps the majority of cases, even he is not the originator of the proposition. It has very likely been given to him by some constituent, or by some organization. Occasionally a committee appointed by the preceding legislature to make an investigation concerning some subject presents legislation relative thereto. A certain number of more important measures emanate from small groups of leading men of the party in power in the State. None springs full armed from the composite brain of the legislature. The legislature through its committees, and later by feeble discussion of the measure on the floor, criticises, modifies, or rejects the propositions made to it. In proportion as it is a good legislature, it performs this critical function carefully and well. It is, of course, obviously true that if laws cannot originate with the legislature as a whole, they certainly cannot originate with the people as a whole. There seems to have been a feeling on the part of some of the most ardent advocates of the initiative that by some hocus pocus the people would suddenly and spontaneously evolve measures of surprising value to themselves. As a matter of fact, how-

ever, initiative propositions are suggested to the people by groups of individuals more or less perfectly organized, who, for reasons of interest or principle, desire to secure the adoption of particular legislation. Under the initiative provisions of the Oregon and California constitutions, there is a limited opportunity only to discuss, and no opportunity to modify these propositions. The State publishes and distributes to the voters arguments pro and con upon each measure, and these arguments now form a very substantial book—substantial physically—of something like 250 pages at the last Oregon election. These arguments are weak, and the illumination which they shed on the questions is no more than that dim light usually associated with things of mystery. There is some excellent discussion by speakers on both sides of the measures which attract most public interest. The newspapers lend occasional aid.

In the campaign which preceded the election of 1914, in California, many organizations such as Chambers of Commerce, City Clubs, and some of the newspapers, published lists of measures with recommendations as to the way in which the citizens should vote. These suggestions were grasped at eagerly. Where the number of measures to be voted on is so ex-

ceedingly great as in the last three elections in Oregon, there is no doubt that, for many of the voters, the majority of the measures are surrounded by an umbrageous gloom.

It would painfully weary the reader to go into the relative merits and demerits of the measures which have been before the people in Oregon and California. In general they have illustrated the same popular tendencies which have long been observable in Switzerland. An aversion to spending money, even where enlightened policy demands it; a wholehearted desire to smite the corporations but an unfortunate lack of consensus as to constructive measures; and a tenacious conservatism as to wholesale political or social reforms are the qualities which characterize direct legislation in Oregon.

At the California election of 1914, the people voted $15,800,000 bonds for public improvements, including $1,800,000 for buildings at the University. It may be inferred from this that the people of California are more liberal than the people of Oregon. They exhibited in general the same sort of conservatism in political and social reforms which has been shown in their northern neighbor. Oregon in 1914 departed from this conservatism by adopting state prohibition, a measure which was severely

beaten in California. The people of California, however, were guilty of one act of petty meanness. They abolished the poll tax, not because of any reasoned objection to it as a form of taxation, but because they wished to avoid paying it. It is something better than bossism and yet far from perfect. It is enough for our immediate purpose to make clear the absolute certainty in the long run that masses of initiative propositions will have to be voted on by the majority of the people in the dark, and will rise or fall with little or no regard to their merits. It is possible to lay traps for the people similar to those which were formerly laid for the state legislatures. At the California election in 1912, one of the initiative measures voted upon had this title: "An act to prohibit book making, pool selling, and to provide for a state racing commission; to grant licenses for horse racing in the State of California, for a limited period, and to permit of wagering upon such races by the Paris Mutual and Auction Pool systems only; and repealing all acts and parts of acts in conflict with this act." Hundreds of people signed the petition to propose this measure on the faith of the statement in the first clause that it was an act to prohibit book making and pool selling. The fraud was ultimately exposed and

the bill defeated after a very active campaign. What would have happened to a measure of less striking importance buried in the midst of twenty-five or thirty other propositions is a subject for serious reflection.

There is reason to fear that initiative propositions can not be properly criticised by the people even with reference simply to their adoption or rejection. It is also clear that under the Oregon and California laws there is no possibility of the amendment or correction of an initiative measure. It may be on the whole a meritorious proposition badly framed and cumbered with some injudicious provision. There is no chance to separate the good from the bad. In other words, the initiative cannot be successfully used as a substitute for a representative legislature. The legislature with all its defects does give an opportunity for a thorough going over of the proposed law, and for every imaginable kind of criticism of it. Initiation by irresponsible bodies of men and quasi deliberation before the people can never be made to do the work of a genuine deliberative assembly. If the initiative could be reserved as a corrective for the non-action of the legislature on matters of vital importance, there could be little criticism of it, but it is not used in that way. A glance at the Oregon ballot of

1912 will convince any observer that matters of inconsequent importance are dealt with by means of the initiative. On the other hand, many important matters are of such a technical character that they can not well be criticised by the people. There is no way of restricting the use of the initiative to those purposes for which it ought to be used. The only way of escape is by so altering the nature of the initiative as to minimize the evils of the institution. The new Ohio constitution contains the suggestion of a better method with regard to the initiative. Substantially it is this: a small proportion (three per cent.) of the total electorate may propose any measure, which is by this fact introduced into the state legislature. The legislature may then adopt it with or without amendments, or reject it. If it adopts it without amendment, that ends the matter unless a referendum petition is filed in respect thereto. If it adopts it with amendments, the measure as originally introduced or with the addition of any amendments incorporated therein may be submitted by either branch of the legislature to the people if an additional three per cent. of the electorate petition to that effect. If the measure so submitted is adopted by a majority of those voting thereon it takes prece-

dence over the amended form passed by the legislature. The proposed amendment of the Wisconsin constitution, which was defeated at the polls November 3, 1914, limited the initiative to measures actually introduced into the legislature. As in the Wisconsin legislature each bill *must* be reported from a committee, there would have been under this system, a reasonable guarantee that the measure would have received some consideration by a recognized and responsible body. The California constitution, as amended in 1911, provides for the submission of measures directly to the people or to the legislature upon eight or five per cent. petitions respectively. In the latter case, if the legislature amends the proposition, the measure as proposed and the legislature's amendments are both submitted to the people; if the legislature rejects the proposal outright, the original measure is submitted alone. As a matter of practice, there is too little difference between the percentages for direct submission and submission to the legislature to induce the friends of any measure to resort to the latter method of promoting it. At the session of 1913, there was proposed a new constitutional amendment, not pressed to passage, very similar to the Ohio plan, except that direct submission could

still be secured by filing a much larger petition (12%). (See Appendix for Ohio, and Wisconsin methods.)

There is the gravest necessity of gearing in some such way the initiative on to our legislative system. Measures introduced to the consideration of the legislature, as in Ohio, with the possibility of subsequent reference to the people will always receive consideration by the legislature and in the great majority of instances they will undoubtedly be able to arrive at some adjustment which will be satisfactory to all concerned. It will do away with the long ballot of initiative propositions, in its way quite as serious an evil as the long ballot of elective officers, and it will, at the same time, give the people an absolute check upon the possible inactivity of the legislature. With this change the initiative may rank alongside the recall and referendum as an efficient mechanism for the promotion of genuinely popular government. As at present organized in California and Oregon, it is likely to result in confusion and danger.

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# CHAPTER X

## OUR JUDICIAL DILEMMA

It was Hume who said that man "is engaged to establish political society, in order to administer justice: without which there can be no peace among them, nor safety, nor mutual intercourse. We are, therefore, to look upon all the vast apparatus of our government as having ultimately no other object or purpose but the distribution of justice, or in other words, the support of the twelve judges. Kings and parliaments, fleets and armies, officers of the court and revenue, ambassadors, ministers and privy-counselors are all subordinate in their end to this part of administration." What was true in eighteenth century England is no less true today. At the very basis of civilization lies the process for the orderly adjudication of disputes between individuals, and the punishment of offenders against society. Before the establishment of courts barbarism prevailed. Their destruction would mean anarchy. It is not enough, however, that there should be a mechanism for deciding cases, i. e.,

with jurisdiction broad enough to cover all cases and with power to enforce its decrees. There must be implicit confidence in the wisdom and fairness of the tribunal, so that men will gladly submit to its adjudication and cheerfully accept its judgments. It removes none of the smart of an unfair decision to know that there is nothing to do but to obey. Indeed, persistently to force men to obey decrees which they sincerely feel are the result of ignorance, prejudice or corruption is deliberately to breed revolutionists. Every few months the dispatches from Italy tell of some atrocity attributed to the "Mafia" or "Camorra," great secret societies which defy the government. Behind their present criminal activities is a suggestive history. Southern Italy and Sicily were for centuries following the disintegration of the Roman Empire, horribly misgoverned by a succession of foreign despots who controlled the administration of justice in the interest of themselves or their rapacious courtiers. So long continued was this reign of injustice that it became a point of honor with good Italians, no matter what their grievance, not to resort to the courts of the oppressor. Private disputes were settled by vendetta and, to protect themselves further, they organized these great secret societies

which enforced the rights and obligations of their members by means of threats and violence. Though the occasion for their existence ceased long ago these societies still continue in blood and crime. Popular disrespect for the courts has had in Italy its logical outcome in outrage and murder.

For hundreds of years we rested content in the majestic pronouncement of Magna Charta: "*To none will we sell; to none will we deny or delay right or justice.*" We believed it to represent the fact as well as the theory of our legal system. Only within the last ten years have we been rudely awakened from our confident repose, and our sense of security shaken by sounds of popular distrust of the courts. The cry of organized labor was the first to be heard, followed here and there by the thin voice of some academic critic. Before long a discordant tumult raged about the erstwhile unapproachable dignity of our judges. Laws' delays, technicalities, prejudice, political ambition, lack of courage, ignorance, laziness, corruption, mediævalism, are some of the charges hurled at them from every quarter. Whether or not we believe any or all of these complaints to be well founded, we must admit what is almost equally portentous, that they are sincerely made by a large and increasing number of per-

sons. There is every reason, therefore, for the closest analysis of the situation to determine, if possible, a means of restoring the courts to the affectionate regard of the people. Little can be done by reciting like the chorus of a Greek tragedy, "The courts must be respected." The days of magic and hocus pocus have gone by. The only way in which an institution can be made to be respected is to make it respectable in fact *and* seeming.

At the first glance it is apparent that the criticisms of our courts may be segregated into two main groups. It is charged that:

1. They have a bias toward the rights of property.
2. They are slow and inefficient.

Let us carry our examination a little further into the nature and causes of these widely different charges.

The accusation that the courts show a bias toward wealth is based especially on their decisions in two important classes of cases: (a) Constitutional questions, and (b) Injunctions in labor disputes. It is secondarily founded on the inevitable hardship on poor litigants of a slow and inefficient administration of justice, with which we shall deal later.

The constitutional decisions which are most commonly cited have to do with the Fifth and

Fourteenth Amendments to the Constitution of the United States and the similar provisions which have found their way into our state constitutions. The Fifth Amendment forbade the United States, and the Fourteenth the several States to deprive any person "of life, liberty or property, without due process of law." To this and other provisions intended to protect the individual from the arbitrary authority of government the courts have given a narrow technical interpretation which, under our changed economic conditions, has favored the rights of property as against the rights of man. Unconscious of their responsibility as custodians, not only of the fixity of the law, but of its growth, our courts have made what were intended as bulwarks of individual liberty the very means of corporate oppression. Take the Braceville Coal Company Case (147 Ill. 66) in which the Supreme Court of Illinois held that a law requiring the payment of wages weekly by a certain class of corporations violated the liberty of and denied the equal protection of the laws to the corporations affected. This, in the face of the well-known fact that the deferred wage systems of many corporations reduce their employees to a condition of practical peonage. The interpretation of "due process of law" has been equally productive of injus-

tice. The most flagrant instance, perhaps, is the decision in Ives vs. South Buffalo Railway Company (201 N. Y. 271). The legislature of New York had adopted an act providing for the payment of a compensation by employers to employees for injuries received in certain hazardous occupations, without reference to the negligence of either party. The Court of Appeals declared unconstitutional this change in the basis of liability for damages, on the ground that it deprived the railway company of its property "without due process of law." The law had been solemnly enacted. The question of whether anything, and if so how much, was to be paid as damages was to be settled by a judicial process. There was no arbitrary seizure of any one's property, merely a new burden put upon property; and to do this in any way whatsoever was, in the opinion of the court, not due process of law. If men or corporations can acquire by long usage a property right in a given liability for damages, the law has reached an alarming condition of fixity. It is not surprising, therefore, that we find a professor of law, himself a product of the conservative atmosphere of Harvard, declaring: "The Fourteenth Amendment, metamorphosed by judicial sleight-of-hand, now embodies, not a bill of human rights, but a broad bill of prop-

erty privileges, of vested rights to exploit others."[1] It is fair to conclude, therefore, that, if the millions of our fellow-countrymen who share this view are wrong, at least there is strong reason for their state of mind.

Turning now to the second category of charges which we summed up in the statement that the courts are slow and inefficient, we will find the complaints equally justified. Cases like that of Williams v. Delaware and Lackawanna Railway Company, in which a brakeman injured in 1882, after six appeals and five new trials, got final judgment in 1904, are perhaps extreme, though by no means untypical of the real situation. The crowded dockets in most centers of population make the delay preceding a first trial a matter of months, even in the case of the most willing litigants, while a defendant who seeks opportunities for delay may almost indefinitely postpone his day of reckoning. The motive for so doing, especially in the case of great corporations and liability insurance companies, is obvious. A very simple computation will show that the postponement of the payment of a claim for ten years, or even for five, will net a substantial interest return to the defendant. Further, it forces the poor litigant to compromise, if it does not discour-

[1] H. W. Ballatine, *Case and Comment*, September, 1912.

age him into utter abandonment of his claim. To delay justice is to deny it to the poor, and, in effect, to sell it to the rich and powerful. The limit of legal absurdity was probably reached in the celebrated Jones County Calf Case from Kansas. The original *casus belli* was four calves worth twenty-five dollars. The case ran over twenty-five years, went to the Supreme Court four times, gave rise to $75,000 of lawyers' fees and $2,800 of costs, all to secure $1000 as a final judgment. Only the well-to-do can afford such an orgy of "justice."

In criminal cases, the effect of delays is even more serious than in civil cases. We have thrown about the accused a profusion of constitutional and legal guarantees of his right to a speedy trial. The community, however, has no such protection. It is seldom that a speedy trial is favorable to the interests of a guilty person. The longer the time between the crime and the day in court the more difficult becomes the task of proving affirmatively the guilt of the prisoner. Witnesses die, move away, memories are dimmed,—circumstances which in a civil action affect one side as much as another, but which in a criminal case only prejudice the prosecution. The tedious months of jury drawing in the Calhoun case in San Francisco, the interminable prosecution of Harry Thaw, are

only notable examples of the leaden-footed march of justice. When, as frequently happens, a case is sent back by the higher courts for retrial all the difficulties of the state's attorney are further exaggerated. Indeed, criminal prosecution is so slow and uncertain in the United States as materially to weaken the deterrent influence of punishment on crime. Criminologists unite in ascribing to the criminal, as one of his most typical characteristics, a childish failure to foresee anything beyond the immediate consequences of his acts. Hence every delay in the infliction of punishment detracts from its moral effect, a loss which can not be redeemed by any subsequent severity. The prevalence of crime, especially murder and other crimes of violence, in this country as compared with England and European countries is appalling. The awful retributions of Judge Lynch are, too, but a natural consequence of the failure of justice to follow hot foot on crime. Lynch law is swift, if erratic, but its results as an *in terrorem* are purchased at the too great cost of the general degradation of the community.

There is no difference of opinion among men who know, as to the universality and dire consequences of the law's delays. Natural conservatives like ex-President Taft and radicals

like Colonel Roosevelt alike are caustic in their criticism of tardy justice. Wrecks of home, family and life, itself, are strewn as thick behind our deliberate judicial Juggernaut as they were behind the Chancery which Dickens long ago attempted to reform by caricature. There can be no question that justice is slow even to the extent of its denial to those who need it most.

We are, therefore, ready to return a "true bill" against our judicial system. There are two counts in the indictment: first, that they have come under well founded suspicion of a bias toward wealth and, second, that beyond the peradventure of a doubt, they are egregiously snail-paced. Let us now go to trial on these issues. Our first discovery will be that it is the exercise of a different kind of power which gives rise to each category of complaints. The interpretation of the constitution—law-vetoing on grounds of unconstitutionality—is essentially a political act. Several very learned gentlemen have recently contributed their extensive views as to the assumption of this power by the courts. Their opinions are various and very interesting,—as historical conjectures. For our present purpose, however, it makes little difference whether the courts stole the power or received it legitimately from the hands of

constitution makers. The important thing is that they have it and that their early awe in its presence has given place to a nonchalance comparable to that with which an experienced miner juggles dynamite. Whereas, at first, they held statutes unconstitutional only in very clear cases, and then with manifest reluctance, they now do not scruple to reverse the policy of the normal law-making bodies on grounds the most technical. It is idle to say that in so doing they are simply applying the law and employing the ordinary means of judicial interpretation. From the very beginning, public opinion in the United States has divided on constitutional questions. Toward questions of constitutional interpretation, a judge's attitude is determined by his general habits of political thinking. Federalist John Marshall gave us McCulloch vs. Maryland; and Democratic Taney, Dred Scott vs. Sanford. A shift in the political complexion of the Supreme Court made a previously constitutional income tax unconstitutional. The general attitude of the judge toward modern economic and social problems determines his opinion upon the constitutionality of social legislation. In the case of Lochner vs. New York (198 U. S. 45) the majority of the court decided that a New York statute prohibiting the employment of men in bakeries

more than ten hours per day was not a proper health regulation and deprived employers and employees of their liberty of contract. In delivering the opinion of the court, Justice Peckham said, "Statutes of the nature of that under review, limiting the hours in which grown and intelligent men may labor to earn their living, are mere meddlesome interferences with the rights of the individual." Contrast this expression of narrow individualism with the broader social policy of Justice Holmes, dissenting, who said: "I think the word liberty in the Fourteenth Amendment is perverted when it is held to prevent the natural outcome of a dominant opinion, unless it can be said that a rational and fair man necessarily would admit that the statute proposed would infringe fundamental principles as they have been understood by the traditions of our people and our law. It does not need research to show that no such sweeping condemnation can be passed upon the statute before us." In each case the judge was giving expression to his social rather than his legal opinion. In almost every constitutional question the decision rests on social and political grounds. Whether the judges will or no the policy of the law is the real *ratio decidendi.*

In the decision of ordinary cases—the cases

in which the delays of the law constitute that flagrant abuse on which we have animadverted, —there is no legitimate political influence. The ordinary administration of justice is simply a highly specialized and technical branch of general administration. The chief qualities necessary to its successful conduct are training and that skill which comes from experience. A thorough knowledge of the law and a judicial temperament are the essential equipment of the judge. It is the unfortunate absence of these qualities, especially among the trial judges of our state courts, which is the chief cause of slow justice. It is the lack of power among trial judges more than anything else which gives opportunity for delays. It is their lack of training and experience which leads us to deny them adequate power. Take for example our jury drawing, all that keeps us from English expedition is that our judges have less power, and much less confidence in the use of the power they have, than their English compeers. In the Federal courts where the authority of the judge is great the speed at every stage of the case is proportionately accelerated. In the matter of time-wasting appeals it is argued that we cannot give to our low-grade trial judges the powers of final decision which are given trial judges in England. It is true,

also, that the inartistic work of trial judges tempts the higher courts into the realms of technicality, a field which seems highly congenial to them. When the Supreme Court of California holds that an indictment for "larcey" is bad because there is no such crime known to the laws of the State, or that an indictment for the murder of "Ah Fong" is bad because it contains no allegation that Ah Fong is a human being; when the Court of Criminal Appeals of Texas says that a verdict spelled "guity" is bad but one spelled "guily" is good; when the Supreme Court of Missouri declares that "instantly" will not do as a substitute for "then and there," we have a situation arising in large measure from the distrust which appellate courts have of their inferiors. If we would enhance the authority of the lower courts we can nowise do it but by improving their personnel—its average of training and experience.

Now political power naturally suggests political responsibility, while a demand for expert training and experience carries with it the idea of careful selection and freedom from direct political responsibility. To the first, popular election and even recall are essential. To the second, popular election is absolutely destructive. Here, then, is our dilemma. How

may we have judges at once responsible for political power and expert in judicial administration? How may we avoid both the frying-pan and the fire? If we have political judges, they will administer the law like amateurs. If we have judges appointed for good behavior, we will have on their part more and more class bias. Indeed the dilemma is a very real one. From such a situation there is but one escape—destroy the cause of the dilemma.

If we remove from the courts their political duty of holding statutes unconstitutional, we can then with safety make our judges appointive, pay them large salaries and give them a permanent tenure. In no other way can we have efficient courts and speedy justice. Various methods of relieving the courts of their political responsibilities have been suggested. It is done to considerable extent by adoption of the initiative which makes the constitution as amendable as any law. Little harm can be done by postponing a measure of reform long enough for a popular vote to put the seal of constitutionality upon it. Mr. Roosevelt's awkward phrase "the recall of decisions" concealed, for many, an idea of genuine merit. There is nothing revolutionary in submitting to the people a statute declared by the courts to be unconstitutional and making it part of the

constitution if they give it their approval. It is only a new aspect of the constitutional referendum by which the people have made and altered our so-called fundamental laws for a century. If a legislature may submit a constitutional amendment directly to the people, it is scarcely more radical to submit one to them indirectly by way of an ordinary statute and the courts of law. Where the initiative exists there can be no serious need of such a referendum. Of course from this point of view the recall of judges is unwise and unnecessary. As long as the judges are elective officers there is no reason for excepting them from the dangers which dog the path of other elective officers. When we remove the reason for judges being elective we remove at the same time all reason for their recall. By this method we avoid those evils which lurk in a judicial system where every man on the bench has his eye cocked on a coming day of election.

"Justice," said Webster, "is the great end of man on earth." Justice requires efficient courts. We can never have swift and efficient administration of justice from courts selected on the basis of political considerations. Let us free our courts from their impossible burden and enable them to dispense justice with an equal hand.

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# CHAPTER XI

## DISORGANIZATION OF STATE ADMINISTRATION

THERE is one subject which has almost entirely escaped the notice of the principal critics of American government. This is the peculiar organization of the administrative side of our state government. A great deal has been written about state legislatures and state courts, and about the power and activity of the governors of States, but very little has been said about state administration. The advocates of the short ballots have touched the subject, in so far as the elective state officers are concerned, but this is only a beginning. We have all known that state government is, comparatively speaking, inefficient. It is admittedly inferior to the efficiency displayed in private business, and even to that of our national government and our better organized cities. In general, we have undertaken to explain this fact by the inferiority of our legislatures, or, at furthest, by the consequences of the long ballot. The worst feature, however, of state govern-

ment is the lack of centralized responsibility in the state administration.

As we have seen, the principal state officers are elected by the people, and so removed from the control of the nominal chief of the State. Further, there is no correlation of their functions except as their good nature and good sense may dictate. Their only responsibility is to the people. We have seen how ineffective this responsibility is. It is true that a very strong governor may, if the other state officers belong to his own party or faction, morally dominate them sufficiently to produce some coherence of administration, but it is only such a combination of circumstances which can produce this result. Altogether our long state ballot removes six or eight of our most important departments from any possible part in a symmetrical scheme of administration. When we come to the appointive officers who are, of course, very numerous, we find a condition of confusion almost as serious in kind and even more significant in extent. Some of them are appointed by the Governor outright, and some by and with the advice and consent of the state senate. Many officers have fixed terms with no provision for removal except by the courts or by impeachment, methods by which the most serious offenses only can be reached; others

are removable only with the consent of the state senate; while a small, but happily growing, class are removable at the pleasure of the Governor. No officer can be said to control his subordinates unless he has the power of removal. The power to select officers as vacancies occur is in itself an important part of the political power of the Governor, but it leaves him helpless to regulate the administration at any given moment. It is apparent that the governor, although he is by the constitution and the terms of his oath of office supposed to care for the faithful execution of the laws, really controls only a limited number of his subordinates. Many readers will at once recall the effort of Governor Hughes of New York to remove Insurance Commissioner Kelsey whom the insurance investigation conducted by Governor Hughes had shown to be incompetent. The Senate, under the leadership of its machine Republican bosses rallied to the support of Mr. Kelsey, and Governor Hughes was denied the right to direct the policy of that department in which he was most interested. By no conceivable twist of the imagination could Governor Hughes be held responsible for the Insurance Department under Mr. Kelsey. It could be theoretically assumed that Mr. Kelsey was responsible to the Senate and the Senate to the

people, but it is obvious that, as a practical matter, he was responsible to nobody.

The difficulty of which we have been speaking would be much less if all state officers retired at the beginning of the term of each succeeding Governor. Such, however, is not the case. Their terms of office expire at intervals throughout the term of the Governor. He can appoint but a few at a time, and never enough to stamp upon the administration his own policy. The characteristic feature of all state administrative systems is the board, the members of which retire in rotation. The management of state institutions, reformatory, charitable and educational, is generally entrusted to such boards, and the Governor can only after some lapse of time appoint enough members of these boards to even insure that they shall be of his general way of thinking, much less to control them. The result is that the Governor fixes the personnel of the administration, in part, for his own term, and, in part, for that of his successor, a system which it is hard to justify upon any principles of administrative science.

It is impossible to conceive of a private business being conducted on such a principle. In private business, there is never a break in the chain of responsibility between the employer

and employee. In the corporation, from stockholder to directors, from directors to general manager, from general manager to his various subordinates, and so on down to the office boy and the scrubwoman, there is a regular hierarchy of authority and absolute power of discipline. It is possible to hold each department head responsible for what takes place in his department, to hold the general manager responsible for the general conduct of the business, to hold the directors responsible for their choice of the general manager, and thus to put into the hands of the stockholders ultimately the power to protect their own interests. Under our system of state administration, the Governor is the only state officer whose responsibility to the people is at all effective. The other elective officers divide with him the executive power, possessing each in his own department the power of appointment and of control of his appointees, subject, however, to a mythical control by the people. The Governor has, it is true, a great power of appointment; but, since he can exercise it at fixed intervals only, and it is accompanied by no adequate power of removal, it is impossible to hold him responsible for the conduct of even his own appointees. Much less is it possible to hold him responsible for the acts of a great number of

public servants who are the appointees of his predecessor. The wonderful thing is that with such a system we can have any kind of a state administration at all. It is only the American faculty of getting along, and the wealth which enables us to pay for inefficient service, that has kept the Ship of State off the rocks so long.

The disorganization of our state administration is in strong contrast to the highly centralized form of Federal administration. The President appoints, in the first instance, the heads of departments, and, in the second place, all the other officers possessing any considerable degree of discretion. Every officer whom he appoints is removable at his pleasure. It is true that the President's power of appointment has been somewhat limited by the principle of senatorial courtesy, which obliges him to accept the suggestions of United States Senators of his own party as to appointments made from their States. This limitation is much less effective on a strong president than on a weak one, and it is probably declining in importance. The controversy between Congress and President Johnson resulted in a temporary suspension of the President's power of removal, the famous Tenure of Office Act making it necessary to obtain the consent of the Senate to a removal. This policy, however,

was abandoned when Congress and the President came to be on good terms again, and it is not likely to be repeated. The officers appointed by the heads of departments, who, of course, constitute by far the greater number of officers, are almost altogether named under civil service regulations on the basis of competitive examinations. The civil service regulations, however, have put no limitation upon the power of removal, so that every officer in the service, from Secretary of State to messenger boy, is removable either by the President directly or by some one whom the President can remove. The result is that the President can control the administration in its least details, if necessary. Of course, it is physically impossible to direct the details of the whole administration, but if news of inefficiency or ill-doing comes to him from any quarter of the country, he possesses the immediate power to cure the evil. He may, therefore, be held responsible for whatever occurs throughout the whole range of the administration. The administrative service of the United States is, in consequence, relatively efficient. There is no confusion of authority, no division of responsibility; the whole system is organized on lines calculated to produce the speedy and economical dispatch of social business. The respect

which we have for Federal authority contrasted with our apparent disrespect of state authority, well illustrates the difference in result of the two systems of organization. One notable instance is the unanimity with which liquor sellers, even in Prohibition States, pay their internal revenue tax while boldly violating the state law.

Another cause which contributes to the inefficiency of state administration is the almost universal application to it of the spoils system. In our national government the civil service regulations prescribe admission to the majority of governmental positions on the basis of competitive examinations. Of those members of the United States service who are not subject to examination, the great majority are laborers, mechanics and fourth-class postmasters—positions to which a competitive examination is scarcely applicable. Many of our cities have more or less effective civil service regulations in force, but only a few of our States have applied the system to their administrative service. The result is that there are no recognized standards for appointment to state positions, and no security of tenure. Every change of administration means a change in the personnel of the service.

Under such circumstances, it is impossible to

get men and women of the best type to accept state appointments. Few people who are capable of holding well paid positions of a permanent character with a private firm or corporation are willing to give them up for the sake of a few years at most on the state payroll. In consequence, our state servants fall much below the standards of private business. Furthermore the political value of such positions has led to their creation without due regard to their administrative necessity. Department after department is overmanned. This leads to idleness and that mischief to which idle hands are prone.

It is highly desirable, therefore, that state civil service laws be enacted providing for merit appointments on a basis of the completion of a recognized course of study or the passage of an examination. Strict regulations should prevent the interference in politics of those in the service. On the other hand, the power of removal by the appointing authority should not be restricted more than to require the filing of a statement of the reasons for the removal in each case. The tenure of the incumbent is sufficiently protected if the appointing authority is not free to put into the place thus vacated his own choice for the position. He is not likely to displace a good man simply

for the privilege of filling a position from the first three names submitted to him by a civil service commission. On the other hand, the power to remove an inefficient officer should be instant and complete. To make it necessary, as some civil service laws do, practically to prove by legal evidence that the person removed has committed something tantamount to a crime, is simply to enact incompetency into the service. That highly pampered individual, the New York policeman, whom nothing short of judicial proceedings can ultimately force out of his place, is a striking example in point.

The necessary reorganization of our state administration should be, in the first place, by making all of the elective state offices except the Governor and Lieutenant Governor, and possibly the Controller, appointive at the pleasure of the Governor. The various branches of the administration should be classified into groups or departments. At the head of each of these departments should be an officer appointed by the Governor without any civil service requirements whatever, removable at his pleasure, and a member of his official family or cabinet. These officers should be the direct personal adherents and friends of the Governor. They should be regarded as political officers and their duty should be to assist the Governor sympa-

thetically in the administration of state affairs. Each of them should be allowed a confidential deputy or assistant to be appointed without reference to the civil service regulations. Every other officer in the service should be appointed perhaps in a few instances by the Governor, but in the majority of cases by the head of the department under strict civil service provisions. The lower ranges of positions may be filled as is done under our ordinary type of civil service laws. We will discuss the method of filling the higher positions in the next chapter. Such a system would give proper coördination and responsibility, and by these means we would have laid the foundation of efficiency in administration.

Below appears a proposed scheme for the reorganization of the state administration:

A SUGGESTED SCHEME OF STATE ADMINISTRATION

*Governor.* (Responsible to the people.)

Linked to the legislature by veto power. Commander in chief of military. Possesses power of pardon. Appoints the following heads of departments:

I. *Secretary of State.* (Appointed at the pleasure of the Governor. Member of cabinet.)

1. Recording functions.
2. Authentication of commissions and other documents. (Great Seal.)
3. Licenses (automobile, etc.).
4. Custodianship of Capitol Building and Grounds and of historical relics, parks, etc.
5. State printing.

II. *The Controller.* (Appointed at the pleasure of the Governor. Member of cabinet.)

1. Custody of State's money.
2. Auditing.
3. Supervision over business efficiency in several departments and institutions.
4. Purchasing agent for all state purposes.
5. Preparation of annual budget.
6. Supervision over city and county finance.

III. *Secretary of Corporations and Labor.* (Appointed at the pleasure of the Governor. Member of cabinet.)

1. Corporation licensing.
2. Railroad regulation.
3. General corporation regulation. (Blue Sky law.)
4. Bank regulation.
5. Insurance regulation.
6. Building and loan regulation.

7. Industrial accidents and insurance.
8. Administration of labor legislation.

IV. *Attorney General.* (Appointed at the pleasure of the Governor. Member of cabinet.)

V. *Director of Public Health.* (Appointed at the pleasure of the Governor. Member of cabinet.)

VI. *Director of Charities and Corrections.* (Appointed at the pleasure of the Governor. Member of cabinet.)

1. Prisons.
2. Reformatories.
3. Insane asylums.
4. Homes for feeble-minded.
5. Charitable institutions (as veteran's homes, etc.).
6. Institutions for adult deaf, dumb and blind.
7. Supervision of local and private charities, county jails, etc.

VII. *Director of Public Works.* (Appointed at the pleasure of the Governor. Member of cabinet.)

1. Building construction.
2. State highways.
3. State-owned utilities (docks, wharves, etc).

VIII. *Secretary of Natural Resources.* (Appointed at the pleasure of the Governor. Member of cabinet.)

1. Agriculture (except education).
2. Mining Laws.
3. Fish and game laws.
4. Water conservation.
5. Forestry. (Including custody of state reservations.)
6. Veterinary inspection laws.
7. Horticulture inspection laws.
8. Land registration.

IX. *Board of Education.* (Seven members appointed for seven years, one retiring each year. Appoints *Superintendent* and other officers.)

1. General educational administration (except University, which should have separate Board of Regents).
2. Schools for defectives.
3. Normal schools.
4. Examinations for admission to all professions.
5. State library.

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## CHAPTER XII

### THE PLACE OF EXPERTS IN STATE AND LOCAL ADMINISTRATION

Not only is our state and local administration defective in its organization and in the character of its rank and file but, in comparison with other systems, it suffers from the absence of expert service. In this country, the actual carrying out of the details of government is left, as we have seen, to officers selected for almost every other reason than administrative ability, and whose tenure of their office is dependent on the turn of the political wheel. In England and on the Continent of Europe, similar work is performed by men specially trained for the tasks, who are sure of their positions so long as they keep up to the established standard of efficiency. The governments of these countries differ from our own and from one another in numerous other particulars. They are alike distinguished from ours only in this. The efficiency and economy of governmental administration in England, France and Prussia has been so frequently commented upon by Amer-

ican observers as to have become commonplace. If we are to find the reason why municipal government in a Prussian city is more efficient than in a New York city, or why the state administration of Saxony gives better results per unit of cost than that of California, we must not forget the presence there and absence here of the expert.

We do not mean that all government offices demand the service of experts. Those who perform purely mechanical or clerical duties, no matter how skillful talent or experience may have made them, are not experts. This particular discussion has nothing to do with such duties or with the means of selecting persons to perform them. We are interested, for the present, only in those positions which call for the exercise of some considerable discretion—places of responsibility in the administrative service. We are, in this chapter, concerned with the "commissioned officers" of administration. The navy yard mechanic, the mail distributor, the department copyist, are as proficient in this country as in Europe. Of experts in responsible positions, however, we have but an accidental few. We govern largely without the aid of men who know; and it is small wonder that cost and efficiency lose all proper relation under such a system. It is far more important

that the men in the responsible places should be well selected than that their more or less mechanical subordinates should be carefully chosen.

The reason for our lack of experts in public service is to be found in our characteristic American confusion of the functions of administration and representation. Deeply imbued with the democratic ideal, we have falsely thought that any man of reasonable intelligence was qualified to fill any position in the government, whether it be that of a legislator or an administrator. We have a boundless faith in the ubiquitous genius of our fellow countrymen. Now comes the dull awakening to the results of overconfidence. We have conceived of every position as representative and, in consequence, have accepted the "average American" as the proper incumbent of every position. Naturally, too, we have applied the principle of popular election to as many administrative offices as possible. As for the rest of the places, our ideal of the "average American" has led us to be indifferent and careless as to the method of, or reason for, his appointment.

As a matter of fact, there is a very clear distinction between the functions of representation and administration, and between the qualifications needed by those who are performing

them. It is the purpose of representation to reflect as closely as may be the will of the people. The representative requires no special training. The possession of learning or capacity may make him more effective, but it frequently withdraws him from the point of view of the mass of the people, and actually hinders his performance of the representative function. In representative bodies it is desirable that all classes in the community should be represented, and this means, in general, the selection of good average specimens of each class, who, in the long run, will be the best possible reflectors of the ideals and interests of their constituents. Of course, representatives should be elected, and should be subject to every possible check to make them responsive to the wishes of those whom they represent. If elected for long terms, they should be liable to recall, and their conduct should be subject to review by the initiative and referendum. They should act wholly in the public eye, and should be constantly amenable to the high court of public opinion. To men thus chosen and thus checked, should be entrusted the determination of all matters of general policy. They would include, in our country, besides members of distinctly legislative bodies, the President of the United States and his Cabinet, the Governor and the

heads of the chief departments of state administration and the mayors and councilmen of cities.

The administrator, on the other hand, has no concern with "policy," except to offer such suggestions and advice as his experience warrants, and to abide by it loyally as determined by his representative superiors. His duty is simply to carry out the policy, and there is no reason why the public should not have its policies administered by men as competent as those who do similar work for private corporations. The administrator's relation to the people is the same that is borne by the general manager and other principal executive officers of a corporation to its stockholders.

The administrator must possess special training. It is of no consequence as to what class of society he comes from. He should be appointed, not elected, and should be removed as far as possible from the immediate effects of public opinion. His tenure of office should be made secure so that he may be willing to make the necessary sacrifices to prepare for the position. In every respect, his qualifications should be the exact opposite of those of a representative. In private business the stress of competition ordains that the responsible positions shall be filled by experts. In public busi-

ness, there is no such "iron law," and men are too frequently appointed because they are good mixers, clever organizers, specious talkers, or because they have "a pull" with some man of power. Public business can never be carried on with the efficiency of private business until for the absent law of competition we substitute a well considered popular volition to be served by experts. In European countries this act of will has been made by the people, or for them by enlightened authorities. In this country it is yet to be made.

It is one of the regrettable incidents of the present day progressive movements that few of the leaders who are fighting earnestly for more honest and more representative government, and for the adoption of measures remedial of many of our economic maladjustments, are awake to this fundamental distinction between the functions of representation and administration. There are few of them whose ideas of civil service reform extend beyond the routine position. Even in that late phase of municipal reform, the so-called commission government of many of our cities, this confusion has been, if anything, intensified. The underlying idea of commission government is that all powers of government, legislative and executive alike, should be centered in the hands of a small

council, or commission. In this respect, it does not differ strikingly, except in the size of the council, from the English system of municipal government, or from that which prevailed in our earlier American cities. If we consider the individual commissioners as mere committees of one upon the various departments into which the city government is divided, the analogy to the British borough council with its committees is almost exact. This system has resulted in establishing our city government upon an honest basis. The organization is so simple, the number of officers to be elected so few, the fixing of responsibility so easy, that our commission governments have become thoroughly representative, giving the people exactly what they ask, without opportunity for graft or corruption. It has gone only a short way, however, toward making the government of our cities more efficient. It offers no greater opportunity for the expert than the older and more complicated forms which it supplants. Unlike a member of the English borough council, our commission government councilors are, in almost every case, salaried officers who are expected to give all, or a very large proportion of their time to the work of the city government, and themselves to do the actual work of administration. They are not only representatives,

but administrators. In general, it may be said, that they fulfill the functions of representation admirably, but those of administration only tolerably.

Take for example the city of Berkeley, California. The mayor of the city is paid a salary of $2400 a year; the councilmen salaries of $1800. They are not required to give their full time to the work, but, as a matter of fact, they ordinarily put in at the city's business the equivalent of a full day's effort. The salary is not large enough to attract the larger business men, or the men most experienced in affairs. This is typical of other American cities under the commission form of government. The first mayor, an attorney and an admirable type of public servant, was replaced, after one term, because of his lack of the graces of popularity, by a Socialist. The latter was undoubtedly a representative of a high order, the spokesman of a large class in the community. As an administrator, however, he had no special fitness, either by training, experience, or natural aptitude. His qualities were those of a propagandist. The third mayor, young, a lumber merchant, promised to unite, as well as could be, the characteristics of representative and administrator. The commissioner of finance and revenue, another Socialist, had conducted suc-

cessfully for some years a small bicycle business in our city. He is a man of excellent character, thoroughly representative of the section of the city from which he comes, but his business had not adequately prepared him to handle the affairs of a ninety million dollar corporation. The members of the city council have always been respectable gentlemen, of good average ability, admirably fitted to serve on a representative council in any city. No exception can be taken to their characters. They have handled their departments honestly and, within their limits, capably. They are not, however, and never will be, experts. They are amateurs in the art of administration; and whether it be in athletics, or billiards, or the business of government, amateurs cannot successfully compete with professionals.

This limitation upon the success of commission government is now very generally recognized by the ablest students of municipal administration. The cry now goes up, "We have honesty, give us efficiency;" and, without the assistance of men who know, efficiency is impossible. The demand for expert service in the municipal field is finding expression to a certain extent in the creation of voluntary and official "bureaus of efficiency." This is an effort to obviate the effects of the amateurishness

of the regular city administrators, by subjecting them to expert criticism, and by supplying through detailed investigations of particular departments, efficiency data plain enough to be used even by amateurs. Of course, it is obvious that such a method of introducing the expert element into the city government can not be permanently successful. It has the same limitation as the process of keeping the individual organism at high pressure by the use of cocktails or hypodermics. It can not take the place of a rationally developed system of administration in which expert service is employed.

Another expression, and for small cities, at least, a more satisfactory one, of the demand for expert service, is the City Manager. This is simply the plan by which the city council should employ, at a comparatively high salary, an acknowledged expert to play the same part in the fortunes of the city administration that a general manager does in those of a private corporation. For cities not too large to make it impossible for one man to have a sure grasp of the situation, this method promises excellent results, provided the business manager is appointed for merit and given sufficient permanency of tenure. The first city to put this idea into effect was Staunton, Virginia, in 1908,

when its council of the antiquated bicameral type gave over by ordinance all matters of an administrative nature to a "general manager." The new plan was first completely formulated as a charter in Lockport, New York, in 1911, apparently independently of the earlier manifestation. This charter, which remains the most complete draft of the city manager idea was, however, smothered by the State legislature. It remained for Sumter, South Carolina, to put the first charter into actual operation in 1912. It was soon followed by other small cities. It was not, however, until Dayton, a city of over 116,000, took advantage of the home rule provision in the new Ohio constitution and the wave of civic patriotism following the flood of March, 1913, to carry a city manager charter, that the idea was raised to the dignity of a "permanent movement." Dayton has had the new form in operation since January, 1914, and from official reports seems to be prospering mightily under it. Other cities are now rapidly adopting this device for putting their governments into the hands of an administrative expert. A City Manager, properly selected, and independent in his position, with power to "hire and fire" subordinates, subject, of course, to proper civil service restrictions, seems the ideal mode of administration for a small city. It

has taken the first hesitating steps toward adoption, and we may confidently look forward to its rapid progress in the next few years.

We have already referred to the successful administration of government on the Continent of Europe as a result of the use of experts in their proper places. A word or two as to the method of selection of these experts may be worth while. In England, the higher civil service, or, to use the English nomenclature, the first-class clerkships of the English government are filled on the basis of competitive examinations of the same standard as the honor examinations in classics at Oxford, and in mathematics and modern languages at Cambridge. No effort is made in these examinations to test the fitness of the candidate for any particular position. They are simply a test of his general training, and they insure that the men who are admitted to the first-class clerkships are the best of the graduates of the two great English Universities. Of course, there is nothing in the successful completion of the university course which insures the possession of administrative qualities of a high order, but there is more probability of getting men of capacity from among such university graduates than among any other class in the community. They are the class who supply the leaders of the bar, the pul-

pit and the business world. The selection of experts by the English municipality is hampered by no civil service restrictions. Any borough council is at liberty to employ any person for any position, with or without qualifications, and to continue his employment for as long or short a period as they desire. An enlightened public sentiment, however, absolutely requires that appointments shall be made on the basis of efficiency, and forbids removals for anything but wrongdoing or incapacity. The larger cities look among the officers of the smaller cities for men who have made good, and then translate them to a larger field of usefulness. The result is that municipal service of various sorts becomes a regular profession into which young men enter, usually in subordinate positions in small cities with a fair prospect of working up to the very highest places. One officer in the English borough deserves special mention. This is the town clerk. He is always a solicitor, in the largest cities always a man of great experience in the office. He is not only an expert in the legal intricacies of the municipal corporations' acts, but by his long connection with city government is qualified to be a general adviser with regard to all sorts of municipal problems. He is, in short, a sort of municipal factotum, corresponding, in a way,

to the proposed business manager of our American municipalities.

In France, entrance to the higher civil service is ordinarily achieved by pursuing a certain prerequisite course of study, the passing of an examination set by the department in which the applicant desires to take service, and then by probationary service, frequently without any compensation whatever, for a period that sometimes extends as long as two years. This, of course, limits the higher French service to the children of families of some substance, a thing which we could not for a moment think of duplicating in America. French municipalities are left as free as are the English municipalities in the choice and retention of their officers, but in France as in England custom dictates that they shall be chosen for their real merit. There is in France, also, a very effective supervision of municipal affairs by the expert officers of the central government.

In Prussia, admission to the higher service is even more difficult than in France. The applicant must have completed a university course, passed an examination, and written a thesis. If he can clear these hurdles, he is then given a four years' probationary term of service, without pay, at the end of which he must pass still another examination. This makes the service,

even more than in France, the exclusive property of the well-to-do. It is, in many respects, a very admirable service, its members being almost universally competent, and its only defects being a tendency to red tape and rigidity.

The Prussian municipalities have a form of organization full of helpful suggestion for us. A large, unpaid city council is the basis of it, the principal business of this council being to select the *Magistrat*. This body consists in part of paid and in part of unpaid members. It is presided over by the burgomaster, who, in the smaller places, is sometimes the only paid member. He is a general municipal expert to an even greater extent than the British town clerk, and corresponds even more closely to the business manager. He and the other paid members of the *Magistrat* are always selected on a strict business basis by the council. If a burgomaster is wanted, the city council will insert an advertisement in the papers throughout the country reading something like this: "Wanted, a burgomaster; applicants will apply at the town hall of——." Then, from among the candidates so applying, one is selected on the basis of the good work which he has previously done. The tenure of office of the paid members of the *Magistrat* is twelve years, with the assurance of a liberal retiring allowance at

the end of that period if they are not reëlected. The admirable administration of the German cities no longer seems a thing to wonder at when we consider the character of the men who are carrying out this work.

In England and Prussia, the relation between the expert administrator and lay officials has been most carefully worked out. The characteristic feature of English administration is a responsible lay officer and a subordinate expert to whom the former looks constantly for assistance. This is true of Cabinet Minister and Justice of the Peace alike. The various branches of city administration, for example, are assigned to committees of the council whose first business is to select an expert to manage the department. As long as he retains their confidence he has a free hand. He recommends policies to them and they ordinarily accept his suggestions. The power of decision, however, in every matter rests with the committee and ultimately with the council as a whole. In Prussian cities there is ample provision for the consultation of the lay members of the "Deputations" which oversee each branch of the administration but, except in financial matters, where the council prevails, the professional official is the deciding factor. The English model is probably better fitted to our situation than

the German. Power, at any rate, should never be granted to experts apart from lay supervision and control. In state affairs each department should have at its head a layman responsible to the Governor. In city affairs, either the lay board of commissioners should collectively choose and regulate a business manager, or individually they should supervise the activities of experts in their several departments.

Lay government is awkward and inefficient. Expert government is stiff and red taped. Experts are never wholly sane. They are monomaniacs, more or less pronounced, upon their own subjects, and an administration left entirely to them soon becomes formal, rigid and devoted to the fulfillment of purely technical aims. Further, no method of selecting expert officials is possible, except by lay supervisors. Popular election can not be counted on because the qualities of the expert are by no means those which most make for popularity. Further, popular election is uncertain and well trained experts will not submit themselves to its chances. Permanency of tenure is a prerequisite of expert service. On the other hand, experts must be responsible to some one. Hence the appearance in every good system of administration of the selecting authority which

acts as a "shock-absorber" between expert and official. Such a system insures responsibility, sanity and efficiency, things to be desired above fine gold in the business of government.

How can we secure the advantages of expert service in the United States? The first step is the awakening of American public opinion to a recognition of the distinction between the functions of administration and representation. We must come to understand that our business is worthy of being conducted by the best trained and most competent of men. We must leave behind forever the fallacy that any American can do anything. If we could so affect public opinion as to create an immediate and insistent demand that only men of sufficient qualifications be appointed to public offices, and that, once in, they should remain as long as they make good, there would be no need of any legal enactments on the subject. It is probable, however, that such a state of public sentiment can not be brought to pass within a reasonable time. We need an example of the results that may be accomplished by experts to put the finishing touches on this course of education. In default of a perfect state of public sentiment, we must provide by law for the filling of the higher administrative places by some system of merit appointment. The first step in this direction is to

divide the civil service into two great classes—the lower and the higher. In the first, put purely clerical or routine positions; in the second, those involving the use of discretion on a large scale. Admission to the former should be, as now, by competitive examinations on the present basis. Admission to the lower grades of the second or higher class should be based upon the completion of a satisfactory course of study, or by the passing of an equivalent examination. No true American will advocate for a moment closing the door to the higher positions on those who have missed the opportunity of a formal education. This being true, there must be a way into this service by examination. More responsible positions must naturally be filled by promotion from below. A good deal of progress has been made in the United States civil service toward the accomplishment of these results. Higher and higher positions are constantly being included in the classified service. In our States and cities, the situation is very different. There the requirement of a course of study or the passing of an examination for the higher positions would be almost revolutionary.

The eligible list for positions in the United States service would naturally be drawn up, as now, by the United States Civil Service Com-

mission. The eligible list for state and municipal and other local positions should be all prepared by a state civil service commission. There are not enough positions requiring experts, and not enough experts to become candidates for them in the average city to bring about anything like effective competition. The state eligible list, from which the State or any town or county might draw, would obviate this difficulty, and at the same time give a better assurance of fair and thorough examination. As to providing the experts to fill these positions, our American universities are, without any very striking increase of their present teaching force, or any great addition to their budgets, in position to train every variety of governmental expert. The writer recently prepared a set of proposed courses in preparation for certain municipal positions, based upon courses now offered in the University of California. He found that it would be necessary to offer but three new courses in order to train practically any kind of municipal expert that might be required. Our universities can turn out the men as soon as the field is open to them; as soon as some assurance can be had that a man who has taken a proper course of study can get a place and keep it.

What is the place of an expert in state and

municipal affairs? There is no place for any one else in any responsible administrative position.

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# CHAPTER XIII

## THE ADMINISTRATION OF EDUCATION

The general principle which should control the organization of the administrative side of government we have seen to be the concentration of power and responsibility. We, therefore, must show strong grounds for recommending any deviation from this principle. Upon education, our state and local governments employ upwards of twenty per cent. of their total revenues. The number of teachers and administrative officers engaged in educational work far surpasses the numbers engaged in any other branch of government. The success of the educational system is more important to a larger proportion of the community than is the success of any other administrative department except that of justice. Granted, then, the enormous importance of educational administration and the marvelous opportunities for the political manipulator which it offers; granted, also, the present state of public sentiment with regard to the employment of experts in public service; there is grave reason for believing that, while

logically educational administration does not differ from other kinds of administration, some unusual precaution should be taken to keep it out of the field of politics. Our well-nigh universal practice in the United States is to provide a separate and peculiar administrative machinery for education, and, on the whole, we have been justified by the facts of the situation.

There are six possible methods of organizing the state administration of education. The first of these is the bureau system, which means simply that education should be administered by a superintendent or secretary appointed by the Governor in just the same way that other departments are administered by similarly appointed heads. The bureau system of managing educational affairs exists in England, France and Germany. In so far as the United States government has educational functions at all, the bureau system is applied to them. The city of Sacramento, California, has pursued the unique policy of intrusting the administration of education to the city council itself, one of the city councilors being the Commissioner of Education. With this one exception, American States and cities have uniformly avoided the bureau system. The bureau system fits in logically with the general scheme of administra-

tion, but, as we have already seen, the dangers which surround it in a country like ours are so great as to render its adoption an invitation to disaster.

Another possible form of administration is that by a commission, the members of which are paid salaries and are expected to perform the actual detailed and professional work of administration. This means applying to education the same system of administration which is so commonly applied to the regulation of public utilities and the conduct of many other branches of state business. It is open to every possible objection which may be alleged against the bureau system, without the logical merit of fitting into a consistent scheme of administration. This method is not employed by any State, but in several cities, notably in San Francisco, it has been tried with rather unfortunate results. In that city, the Superintendent of Schools, who also possesses independent administrative authority, is elected by the people. The result is a confusion of responsibility and a division of authority incompatible with genuine success. As to the working of the commission plan without such complications, we have no data.

The third possible arrangement is that of a board made up in a majority, at least, of educational experts, who may be appointed either

by the Governor or occupy their position *ex officio*. This system is employed with considerable variations as to detail in some eight of our States, including Virginia, West Virginia, Indiana and, until 1913, California. On its face, a board of education thus composed should be exceedingly efficient, especially if it is so arranged as to secure representation on the board of all sorts of educational interests. Great criticism has been directed against the system formerly in vogue in California because the majority of the board members were principals of normal schools, while secondary and elementary education were unrepresented. The members of such boards are thoroughly familiar with educational work and very competent to render sound judgment. The great difficulty of the system is that these expert members of the board are already fully occupied in the performance of important duties, so that they have very little time to give to the supervision of education. They can, indeed, give no more time to it than a board of laymen, and in the time at their disposal there is very little opportunity for them to employ to advantage their expert knowledge. Furthermore, in all the States in which these expert boards exist, the superintendent of public instruction, who is the executive officer of the board and the real head of the

educational administration of the State, is elected by the people. We have already seen that it is impossible to secure a permanently wise selection of experts by popular election. Popularly elected superintendents of public instruction are sometimes excellent men, but they are always politicians, and almost never educational experts. The result is that in this system we have an absolute reversal of what we have already seen to be the normal constitution of any administrative system. Instead of laymen performing representative functions, including the appointment and control of experts, we have a body of experts set to criticise and control a lay administrator. In other words, we have the expert in the wrong place. As this system has worked out there has been little to commend it. It is not now supported by any considerable authority on the subject of educational administration.

The fourth possible system is that of an ex-officio board of state officials, to which may be added certain appointive members. Colorado has this system in its purity, with the Superintendent, Secretary of State and Attorney General as its Board of Education. Florida has the same system, with the addition of the Governor and the State Treasurer. If, of course, the number of appointive members is in a ma-

jority, it will be proper to place such a board under the sixth order of classification. There is little that can be said in defense of ex-officio boards of state officials. Such boards, whether they are set to supervise education or any other branch of administration, are singularly inefficient. They seldom do anything, each member being usually more interested in avoiding responsibility than in promoting the work of the board. The work of a board of education so organized is not the business of any particular member on it except the superintendent, whom the board is expected to supervise. It is a safe conclusion, then, that such boards are simply incumbrances and have no excuse for existence. They are neither logical nor practical.

The fifth possible plan is that of Michigan, by which a board of education, consisting of three members, is elected by the people. No one would, I think, seriously recommend the adoption of this plan anywhere else. We have seen enough of the evils of the long ballot to wish to avoid any increase of the number of elective officers.

The sixth plan is that of a board of laymen appointed by the Governor. If we include those States in which the board is partly ex-officio but in a majority appointive, this plan is the one in force in a majority of States. It,

too, is subject to abuse if the terms of the board are no longer than that of the authority appointing them, so that the Governor can control the complexion of the board. It is possible for it to become a mere instrument in his hands for politically directing the administration of education. If, however, the members of the board are given a long term and are retired in rotation, so that it is impossible for any one Governor to get control of the board, we have practically absolute protection against the introduction of politics in a bad sense into the schools, and have a basis for a system of educational administration which is worthy of some future notice. In most States having this form of board, a superintendent of public instruction is either elected by the people or appointed by the Governor. In Massachusetts, Connecticut, Rhode Island and New York, the Superintendent of Public Instruction is appointed by the Board. Where the Superintendent of Public Instruction is an independently elected state officer, and, as is always the case, a member of the board, the control which the board has over him is not very effective except, unfortunately, in those matters in which the partisan exigencies of the majority of the board may lead them to act as a unit. In other words, upon all educational matters they are

likely to show little interest and exercise little power. Furthermore, under such a system there is expert knowledge neither in the board nor in the superintendent. Where, however, the superintendent is appointed by the board, he ordinarily is selected because of his fine record as an educational expert. This system establishes what we have seen to be the ideal relation between lay representatives and expert administrative officers; in other words, we have a standard organization for an administrative department different from other departments of administration only in the fact that the lay authority is, in this case, a separate, independent board, instead of being a single officer directly responsible to the chief executive or the people. We have, therefore, protected the educational system against any incursion of political hordes and, at the same time, provided it with an internal administration of a standard sort.

It would be easy to demonstrate, not only by the line of *a priori* reasoning in which we have just indulged, but by the profitable experience of those communities where the system has been tried, the eminent desirability of the system of lay boards and expert superintendence. The two best systems of state educational administration that we have are those of Massachusetts and New York, in which an expert is appointed

by a lay board. The typical form of organization of the local administration of education is that of a lay board elected by the people and an expert superintendent appointed by them. On the whole, this system works admirably, the exceptions usually arising from the fact that either the board or the superintendent fails to recognize the proper sphere of their activities. Sometimes the superintendent endeavors to run the politics of the board; sometimes the board endeavors to perform the technical work of administering the school system. Where the board leaves the superintendent a free hand in the administration of the technical side of education, so long as they retain confidence in him and his methods, and where he confines himself strictly within his bounds, leaving to the board the determination of the broader matters of policy, the system works to perfection. Indeed, this may be taken as a typical example of the relation that ought to exist between the expert and his lay superiors.

We may conclude, then, that educational administration should be, in accordance with the almost universal local practice, and with the experience of the States having the best systems, entrusted, as far as the State is concerned, to a board appointed by the Governor for a long term, its members retiring in rotation, this

board to have the power of appointing the superintendent. Locally, it should be entrusted to either elected or appointed boards of laymen, who, in turn, should appoint the local superintendents.

It is objected to this system by those who distrust the ability of boards of laymen to handle technical questions of education, that the board ought to contain persons who have had experience in educational work. To this we would reply that the function of a board of education is not to handle the details of educational administration, but simply to determine broad matters of policy and select a superintendent. If an expert board should select an expert superintendent, as it might be reasonably expected to do if it had the power of appointing him, we would have a system in which the lay point of view would have no place. This would be highly undesirable. A touch of lay sanity is needed in every branch of administration, perhaps more so in education than anywhere else. A lay board with an expert superintendent gives us the right combination of lay and expert opinion, of an expert board and the publicly elected.

Still another type of mind contends that in spite of all that is said about the danger of politics entering into school administration, the

only logically consistent thing to do is to adopt the bureau system. To these people who are so rash as to wish to run the risk of what might happen to our system of education under direct political control, we would reply that, granted everything else which they have alleged, their system would provide no adequate supervision of the activities of the superintendent. Few governors, by training or by disposition, are fitted to undertake a close supervision of a superintendent of public instruction. Furthermore, the Governor has no time for it. Service for several months in the office of the most efficient and industrious Governor the State of California ever had, has convinced the writer that there is no chance in such an office for the supervision of the highly technical work of its superintendent of public instruction. In France, where the bureau system of education prevails, not only is the Minister of Public Instruction responsible to the Chamber of Deputies, in which there are many members interested in education and ready to call him to account for his least mistake, but provision is made for a great council of education, composed of educational experts who supply advice upon educational questions and settle appeals from minor educational authorities. In England, the President of the Board of Education, al-

though the Board is a mere phantom, is also responsible to the House of Commons. A board of education seems to be necessary in order to secure adequate supervision of the activities of the professional expert superintendent.

Last of all, there is a class of people who believe that it is necessary to retain the superintendent of public instruction as a publicly elected officer in order to obtain the representation of popular views in the state administration of education. They demand that the people shall not be deprived of their "tribune," the state superintendent. There is a not inconsiderable class of politicians who delight to appeal to this point of view, although they must be aware in their own hearts of the fact that an elected state superintendent has never been and never will be a tribune of the people. We have already seen, in our discussion of the long ballot, how little attention the people give—not through any fault of theirs—to the minor state officers. To this class the superintendent of public instruction belongs. He has, like the other minor officers, been picked out by the ring politicians who have habitually made up the party slate. In the old days this choice used to be ratified by the party convention. It is now generally ratified by the direct primary.

The people, however, in voting in the direct primary, have no more interest in or information about the superintendent or other minor candidates than they formerly had in voting at the election. The result is that our superintendents of public instruction have, in general, been representatives, not of the people, but of the controlling political clique in the State. It is true that such political cliques usually put up men for this position who have some kind of qualification for it, but to claim that the superintendent of public instruction should be retained as an elective officer because he is a "tribune of the people" is to ignore the actual facts of practical politics.

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## CHAPTER XIV

### WHAT IS THE MATTER WITH THE PRESIDENCY?

For a long time there has been a vague feeling on the part of the American people that there is something the matter with the Presidency. Entirely apart from the success or failure of the men who fill the position there can be no doubt that the excitement, bitterness, treachery, fraud and demagogism of a Presidential campaign is proof sufficient that there is about the office some unfortunate quality which produces these unfortunate conditions. The truth is that the office is too big. Not perhaps too large for the right man to administer successfully, but too attractive, tempting, seductive, for the preservation of the honor and self-respect of candidates. The prize is too great for men to strive for it fairly. The importance of winning transcends all respect for the rules of the game.

The office is too big. In no other country of the world is there any such office to be disposed of by election. In the democratic mon-

archies, of which England is the type, some nominal power and a great deal of real dignity rests with the king. The actual governing authority belongs to a group of men, the Cabinet, who must compete for a place in the popular mind with the splendid though somewhat unsubstantial chief of state. In the French Republic, the President lives in a palace and spends his time and a large income impressing his dignity upon the people. Although the position carries with it little real power, there has never been any difficulty in inducing the most successful of French politicians to accept it. The Council of Ministers is like the English Cabinet in its relation to this gorgeous semblance of power. In no other country where popular government prevails is there an officer like the President who combines the dignity of apparent primacy with the possession of substantial power. There is no doubt that it is the greatest office in the world. Of recent years it has been made an incomparable agency for the direction of the political opinions of the people, thus giving to the President a political potentiality of the first magnitude. It is true that not every incumbent has been notably successful in employing his opportunities in this direction—indeed it may well be said that this was the conspicuous weakness

of our most recent Republican President. Yet the power is there for the master brain to use for the weal or woe of the nation. If Archimedes lived today possessed by his old time desire to move the world, he need only wish to be the President of the United States.

Every politician who comes within the magnetic area of this gigantic office is inevitably deflected from the straight course by his desire to secure it. Even in the days when the Presidency was much less, and the United States Senate much more, than now, great men destroyed their higher reputations straining for this Hesperidean prize. Calhoun, finding he had no chance to achieve it, in bitterness of spirit turned his back on a record of generous nationalism to become a baneful prophet of secession. As to Clay, one need only quote the brilliant dictum of Carl Schurz. "Even his oft quoted word that he would 'rather be right than be President,' was spoken at a time when he was more desirous of being President than sure of being right." The colossal Webster was accused of stultifying himself in the hope of conciliating the sentiment necessary for an election which he never received, and there can be no doubt that when he became certain that the prize was not for him he spent his latter years in uncharitable petulance.

Once come near it and men forget both their friends and their principles. According to their several tempers they beg, bargain, truckle, threaten or abuse. Some would wreck the party they cannot control, while others would steal from their party the nomination which they cannot honestly secure. There may be honor among thieves, but among Presidential candidates rarely much. The exceptions emphasize the rule. The Presidential office is too big for poor human nature, and it is unfortunately true that political nature is among the poorest of the human variety.

At the same time that the Presidency is of such overweening attractiveness to those who come within reach of it, the office has never supplied any rational incentive for good men to go into politics. It may be safely assumed that the man of parts and character will demand of a political, as well as of any other career which he has in contemplation, that there shall be in it a progressive opportunity for increased usefulness and for personal advancement. Our political system has never supplied such an incentive. Up to a certain point there seems to be a sort of succession from that smallest office known to man—the place of justice of the peace—up to the second branch of the state legislature, and even to the

lower house of Congress. Here the rule of succession actually operates to the disadvantage of the state legislature and the national House of Representatives because few men of ability are willing to undergo the long apprenticeship in insignificant positions. To the higher places, however, the governorships, the United States Senatorships and the Presidency there is no orderly succession. There is no line of political endeavor which seems to give any advantage in candidacy for these positions even as against an absolute outsider. Hiram Johnson and Woodrow Wilson never held political office until their election to the Governorships of California and New Jersey. It is true that the majority of the members of the United States Senate have had previous political experience of a somewhat extensive kind, but the variety of offices that have been held is so great that it is impossible to imagine a career the logical conclusion of which is a seat in that body, unless, indeed, it be a money-making career.

The situation is even more marked when we come to the Presidency of the United States. If we begin with 1860 we will find that our Presidents for half a century have come to the office for almost every other reason than as the culmination of a great and success-

ful political career. Lincoln had served in the Illinois legislature and a term in the House of Representatives of the United States, but so had a great many other persons whose legislative records were as distinguished as his. He was nominated because his utterances in an unsuccessful campaign had made him available as a compromise candidate when the leading men of his party proved to be deadlocked for the honor. He was a most fortunate accident. Grant received two terms on the basis of his military record and Conklin's reference to the "Sour Apple Tree" nearly got him the nomination for a third. Hayes was, when nominated, Governor of Ohio. His record was sound but unimpressive. He was nominated because of his "availability." Garfield's fine military and Congressional record may be taken as a mild exception to the rule. Cleveland's sole distinguishing service had been as Governor of New York. Harrison was, at the time of his nomination, in the United States Senate. He was not, however, a man of great prominence. He was nominated at the suggestion of Blaine because he was untouched by scandal, had a good military record, and was the grandson of a most popular President. McKinley is perhaps a second exception to the rule because he had a congressional record of some length and

prominence and had been Governor of Ohio. He was, however, much less well known than his opponent for the nomination, Thomas B. Reed, whose political service had been infinitely more distinguished than McKinley's. Roosevelt of course came into the Presidency by accident and achieved a second term by a popular majority greater than any other President in our history. His career has violated all rules and theories and may safely be set aside in considering the ordinary road to the Presidential chair. Taft more than any other chief magistrate since John Quincy Adams worked his way up to the Presidency through distinctly logical gradations. He was in the true sense of the word promoted to the Presidency.

The only natural approach to the office of President which can be discovered from the facts just outlined is that by way of the Governor's chair. Even this way of drawing nigh unto the coveted honor has been used but four times since 1860. The truth is that the first nomination comes to a man more frequently because of his "availability" than for any other reason. To be "available" a man must have a clean record, with a touch of the military in it if possible. He must be agreeable —not the first or even the second choice of anybody—but agreeable to everybody. In

other words, his career must have been colorless. Finally, he must live in New York or Ohio. The explanation of this latter point opens the way to the discussion of one of the incidental defects of the Presidency—the electoral system. Since all the States, from motives of pride or desire for influence in national elections, now choose their electors by general ticket it is very much more significant to carry certain of the large States by even the smallest of majorities than it is to secure the general approval of the people of the whole country. Not only does this lead to the selection of candidates from a limited list of large and doubtful States to the exclusion of the talent of the rest of the country, but it sometimes results in minority elections. This is properly to be expected when, as in 1860 and 1912, three or more candidates are in the field. The evil lies in the fact that a candidate with a majority of the popular vote may be defeated as was Cleveland in 1888. There is no temptation to bring out the minority vote in States which are certain one way or the other and there is little use in rolling up large majorities anywhere. We have never had a President from west of Illinois. We have not had a President from south of Ohio since Buchanan nor one from New England since the second Adams. In the

last ten Presidential elections we have chosen the occupant of the White House three times from New York and five times from Ohio, while Woodrow Wilson comes from New Jersey which is only a suburb of New York. In the two instances in which an Ohio President has died in office he has been succeeded by a Vice-President elected from New York. It is foolish to assume that all the Presidential timber in the country comes from the political forests of those States. A small group of populous eastern States have elected all our Presidents for fifty years, sometimes in defiance of the will of the whole people, and they will continue to do so as long as the present highly irrational and outworn system of choice prevails. The original purpose of the electoral college was never fulfilled. It serves no useful purpose of inducing reflection and deliberate judgment of competent persons in the selection of the President. It merely gives a few States in a particular section more power than they ought to have.

One modification of the previous paragraph perhaps deserves attention, and that is that nominations for a second term are secured not on the basis of the State a man comes from or for other reasons of availability. A national convention renominates a candidate for a sec-

ond term not so much because it wants to as because it has to. It may, of course, incidentally want for reasons of principle or expediency to make the nomination, but it is a very poor President who, desiring such a term, —and most of them do,—cannot manage the comparatively simple matter of a nomination. It has been peculiarly easy for Republican Presidents to bring to pass this consummation because of the fact that in the South practically the only important Republicans are the holders of Federal offices within the gift of the President, while at the same time the South is represented in the Republican convention with a full complement of delegates on a population basis. A Democratic President has no such patent machinery for the corruption of a convention ready to hand, but the only Democratic President for fifty years was renominated, after, it is true, a more desperate struggle than has usually characterized conventions. A President plays the game for renomination with loaded dice. Not only does he shape his policies to catch the favor of the people, not only does he have his ear ever to the ground to get advance information as to the best shape to give his policies, but with offices and influence in legislation he leads or drives the politicians into line. Instead of studying to serve

the people and trying his best to fill the job they have hired him to fill for them, he spends his time trying to make as far as possible their approval or disapproval of his official conduct entirely nugatory. The explanation of such dereliction in otherwise honorable men is found to be the size of the office on which we have already commented at length. Motive and means together are a terrible menace to the integrity of our government. Many persons exclaim with alarm at the prospect of any man having a third term in the White House even when a period of years has elapsed since the candidate's last incumbency. The real danger lies not in the number of terms, but in the use of patronage and other improper means to perpetuate a President in power. If the present system is otherwise to remain in force some limitation on reëligibility is imperative.

It is now many years since Woodrow Wilson, then a young man, wrote his famous criticism of the relation of the executive to the legislative in this country.[1] He pointed out the lack of coördination between these two great departments, and strongly urged that Congress, which he conceived to be the increasingly vital force in our system, be given such control over

[1] Woodrow Wilson, "Congressional Government," Boston, 1885.

the executive as the English Parliament has over its executive instruments, while at the same time the suggestion of policies should be left to the latter. In other words he pleaded for the responsible ministry form of government. His book attracted at that time some attention among the cultured few, but it never made any practical impression on the great mass of the people. So far as they heard of its theories at all it was only to smile at the vagaries of the youthful professor. The occasional essays of Congressional committees in the same direction have never broken the calm popular assumption that the form of our government was the only possible and the best imaginable for this country. Nevertheless the lapse of time has served only to establish, on somewhat different grounds it is true, the unsatisfactory character of the relation of President and Congress. The President today is much more powerful than President Wilson painted him in 1885. A good example is Mr. Wilson's own domination of Congress. He played as President a very different rôle than he put on paper as a student. The criticism now pertinent is that the President does not have a *proper* influence on legislation. This does not mean that the President is not legislatively powerful. On the contrary his

power is enormous. He may not only veto measures, and it is next to impossible to pass them over his veto, but, what is frequently more important, he can threaten to veto. A member who will stand out against the President's expressed or implied threat to hamper his legislative career with the veto is a brave man. The President has a vast patronage which is choice bait to catch votes in Congress withal. He has the ear of the people as no member of Congress or combination of members of Congress has, and he may, if he has talent and disposition for it, determine the character of legislation by his popular appeals. The difficulty does not lie in the quantity of his power, but in the fact that it can be exercised only with the taint of political jobbery and, even so, only on certain matters of great popular moment. There is no assurance in our system that the needs of the executive department will be adequately met, that receipts and expenditures will be properly coördinated, or that any definite policy emanating from any responsible source will be carried out. In fact, every one knows that these things are not in practice accomplished. The declarations of the political parties are largely left to be carried out by a score of independent committees who have little or no responsibility in this re-

gard. A very strong President may, by the exercise of the various means of influence at his command, get some of what he wants if neither House of Congress has a majority of an opposing party. Otherwise we have the situation well illustrated by the Sixty-second Congress wherein no constructive work of any serious kind was accomplished, and nowhere to lay the blame for it.

We have already discussed that significant development in American political life—the almost uninterrupted augmentation of the power of the Speaker of the House of Representatives. From the point of view of the student of institutional evolution it has been simply an illustration of the natural tendency of all numerous bodies of men to seek and accept leadership. Being in mass incapable of genuine initiative our four hundred representatives are inevitably reduced to acquiescence in the measures projected by their leaders. The revolution in the House Rules which accompanied the fall of Cannon did not destroy the power of the speaker, only transferred it to other and less responsible hands. As a matter of fact such power is necessary in Congress as it is in the British Parliament. The real need is a strong and responsible leadership. If our Cabinet, like that of England, was part of the House

of Representatives and responsible for bringing in a comprehensive programme of legislation as well as for an efficient administration of the government, we would have all the advantages of our present system in securing the dispatch of necessary business and at the same time the possibility of holding the right parties responsible for whatever of good or evil ensued. The function now performed by the Speaker and Rules Committee of controlling the time of the House would be performed by the Cabinet. In short, the system of responsible ministry government would give us not only relief from the overwhelming power of the President but at the same time afford a responsible direction to the legislature.

An almost equal degree of importance attaches to the added control which the legislature would have over the executive. The fact that its existence depends on fulfilling the expectations of the House in matters of administration would make the work of every executive department more careful. There would be a constant and effective supervision of administration by the legislature instead of occasional and resultless inquests by committees which can do nothing more than recommend futilities. The farce of Congressional investigations would be at an end. Of course under

such a system the President would become a figure-head and the real executive would be the Cabinet. The more numerous honors of Cabinet rank to be earned most readily by creditable service in Congress would attract the best brain and heart of the country to that service. The power of the House of Representatives would be greatly increased, a thing that its previous record would hardly seem to warrant. If, however, we remember that its powerlessness has been a moving cause in keeping good men out of it, we can easily reconcile ourselves to the change. The Senate would naturally shrivel to the proportions of second chambers in other countries where the system of ministerial responsibility prevails. There has been little in the recent history of that body to make the retention of its present potency desirable, and it is beyond doubt that there would be room for the mental activities of its present personnel even in a sphere much more restricted than that of the Senate in France.

There is no reason to suppose that the new plan will work perfectly. From England there has recently come a good deal of criticism of this system as it operates there,[1] and it is common knowledge that in France the plan has hardly suited the Gallic temperament. No

[1] Belloc and Chesterton, "The Party System," London, 1911.

system of government is ideal and there is none that will always and inevitably work out the best results. A responsible ministry, however, modeled somewhat on that of England, would correct several of the more obvious defects in the organization of our government, and involve only the difficulties incidental to all democratic constitutions.

It would be idle to suppose that it is practicable at once to make the suggested change in its completeness. Prejudice, especially the prejudice against everything English which will not even permit us to call a department officer an "Under Secretary," will operate to prevent it. Inertia and self-satisfaction will be among its enemies. Then there is, too, the real danger of upsetting existing machinery of a sudden. There is nevertheless one reform often recommended and of plain utility. It is a measure which may be taken safely even if there is no intention to go further. That is the giving of members of the Cabinet, seats and the right, at least to speak in the House of Representatives and Senate. Thus far we can proceed without fear of revolution. Let us march on.

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# APPENDIX A

## THE RECALL IN SCHAFFHAUSEN AND LOS ANGELES

### Constitution of the Canton of Schaffhausen

DIVISION IV

The people may at any time recall the Great-Council. As soon as such a request is handed to the Government-Council by at least 1000 active citizens it is obliged to order immediately a popular vote on the question.* * * If the majority of voters decide in favor of the recall, a new election takes place. The new Great-Council puts an end to the duration in office of the recalled Council.

### Los Angeles City Charter, Amendment, 1903

THE RECALL

Sec. 198c. The holder of any elective office may be removed at any time by the electors qualified to vote for a successor of such an incumbent. The procedure to effect the removal of an incumbent of an elective office shall be as follows: A petition signed by electors entitled to vote for a successor to the incumbent sought to be removed, equal in number to at least 25 per centum of the entire vote for all candidates for

the office, the incumbent of which is sought to be removed, cast at the last preceding general municipal election, demanding an election of a successor of the person sought to be removed, shall be filed with the City Clerk; provided that the petition sent to the Council shall contain a general statement of the grounds for which the removal is sought. The signatures to the petition need not all be appended to one paper, but each signer shall add to his signature his place of residence, giving his street and number. One of the signers of each such paper shall make oath before an officer competent to administer oaths, that the statements therein made are true, and that each signature to the paper appended is the genuine signature of the person whose name purports to be thereunto subscribed. Within ten days of the date of filing such petition the City Clerk shall examine and from the great register ascertain whether or not said petition is signed by the requisite number of qualified electors, and if necessary, the Council shall allow him extra help for that purpose, and he shall attach to said petition his certificate showing the result of said examination. If, by the Clerk's certificate, the petition is shown to be insufficient, it may be amended within ten days from the date of said certificate. The Clerk shall within ten days after such amendment, make like examination of the amended petition, and if his certificate shall show the same to be insufficient, it shall be returned to the person filing the same without prejudice, however, to the filing of a new petition to the same effect. If the petition shall be found to

be sufficient the Clerk shall submit the same to the Council without delay. If the petition shall be found to be sufficient the City Council shall order, and fix a date for holding the said election, not less than thirty days nor more than forty days from the date of the Clerk's certificate to the Council that a sufficient petition is filed.

The City Council shall make or cause to be made publication of notice, and all arrangements for holding of such election; and the same shall be conducted, returned, and the result thereof declared, in all respects, as are other city elections. The successor of any officer so removed shall hold office during the unexpired term of his predecessor. Any person sought to be removed may be a candidate to succeed himself, and, unless he requests otherwise, in writing, the Clerk shall place his name on the official ballot without nomination. In any such removal election, the candidate receiving the highest number of votes shall be declared elected. At such election if some other person than the incumbent receives the highest number of votes, the incumbent shall thereupon be deemed removed from the office upon qualification of his successor. In case the party who receives the highest number of votes should fail to qualify within ten days after receiving notification of election, the office shall be deemed vacant. If the incumbent receives the highest number of votes he shall continue in office.

(These provisions have since been altered by amendments adopted in 1911.)

# APPENDIX B

## LATE FORMS OF THE INITIATIVE AND REFERENDUM

### Ohio Constitution, Article II

Sec. 1. The legislative power of the State shall be vested in a general assembly consisting of a senate and house of representatives but the people reserve to themselves the power to propose to the general assembly laws and amendments to the constitution, and to adopt or reject the same at the polls on a referendum vote as hereinafter provided. They also reserve the power to adopt or reject any law, section of any law or any item in any law appropriating money passed by the general assembly, except as hereinafter provided; and independent of the general assembly to propose amendments to the constitution and to adopt or reject the same at the polls. The limitations expressed in the constitution, on the power of the general assembly to enact laws, shall be deemed limitations on the power of the people to enact laws.

Sec. 1a. The first aforestated power reserved by the people is designated the initiative, and the signatures of ten per centum of the electors shall be required upon a petition to propose an amendment to the constitution. When a petition signed by the aforesaid

required number of electors shall have been filed with the secretary of state, and verified as herein provided, proposing an amendment to the constitution, the full text of which shall have been set forth in such petition, the secretary of state shall submit for the approval or rejection of the electors, the proposed amendment, in the manner hereinafter provided, at the next succeeding regular or general election in any year occurring subsequent to ninety days after the filing of such petition. The initiative petitions, above described, shall have printed across the top thereof: "Amendment to the Constitution proposed by Initiative Petition to be Submitted Directly to the Electors."

Sec. 1b. When at any time, not less than ten days prior to the commencement of any session of the general assembly, there shall have been filed with the secretary of state a petition signed by three per centum of the electors and verified as herein provided, proposing a law, the full text of which shall have been set forth in such petition, the secretary of state shall transmit the same to the general assembly as soon as it convenes. If said proposed law shall be passed by the general assembly, either as petitioned for or in an amended form, it shall be subject to the referendum. If it shall not be passed, or if it shall be passed in an amended form, or if no action shall be taken thereon within four months from the time it is received by the general assembly, it shall be submitted by the secretary of state to the electors for their approval or rejection at the next regular or general election, if such submission shall be demanded by supple-

mentary petition verified as herein provided and signed by not less than three per centum of the electors in addition to those signing the original petition, which supplementary petition must be signed and filed with the secretary of state within ninety days after the proposed law shall have been rejected by the general assembly or after the expiration of such term of four months, if no action has been taken thereon, or after the law as passed by the general assembly shall have been filed by the governor in the office of the secretary of state. The proposed law shall be submitted in the form demanded by such supplementary petition, which form shall be either as first petitioned for or with any amendment or amendments which may have been incorporated therein by either branch or by both branches of the general assembly. If a proposed law so submitted is approved by a majority of the electors voting thereon, it shall be the law and shall go into effect as herein provided in lieu of any amended form of said law which may have been passed by the general assembly, and such amended law passed by the general assembly shall not go into effect until and unless the law proposed by supplementary petition shall have been rejected by the electors. All such initiative petitions, last above described, shall have printed across the top thereof, in case of proposed laws: "Law Proposed by Initiative Petition First to be Submitted to the General Assembly." Ballots shall be so printed as to permit an affirmative or negative vote upon each measure submitted to the electors. Any proposed law or amend-

ment to the constitution submitted to the electors as provided in section 1a and section 1b, if approved by a majority of the electors voting thereon, shall take effect thirty days after the election at which it was approved and shall be published by the secretary of state. If conflicting proposed laws or conflicting proposed amendments to the constitution shall be approved at the same election by a majority of the total number of votes cast for and against the same, the one receiving the highest number of affirmative votes shall be the law, or in the case of amendments to the constitution shall be the amendment to the constitution. No law proposed by initiative petition and approved by the electors shall be subject to the veto of the governor.

Sec. 1c. The second aforestated power reserved by the people is designated the referendum, and the signature of six per centum of the electors shall be required upon a petition to order the submission to the electors of the State for their approval or rejection, of any law, section of any law or any item in any law appropriating money passed by the general assembly. No law passed by the general assembly shall go into effect until ninety days after it shall have been filed by the governor in the office of the secretary of state, except as herein provided. When a petition signed by six per centum of the electors of the State and verified as herein provided, shall have been filed with the secretary of state within ninety days after any law shall have been filed by the governor in the office of the secretary of state, ordering that such law or any

item in such law appropriating money be submitted to the electors of the State for their approval or rejection, the secretary of state shall submit to the electors of the State for their approval or rejection such law, section or item, in the manner herein provided, at the next succeeding regular or general election in any year occurring subsequent to sixty days after the filing of such petition, and no such law, section or item shall go into effect until and unless approved by a majority of those voting upon the same. If, however, a referendum petition is filed against any such section or item, the remainder of the law shall not thereby be prevented or delayed from going into effect.

Sec. 1d. Laws providing for tax levies, appropriations for the current expenses of the state government and state institutions, and emergency laws necessary for the immediate preservation of the public peace, health or safety, shall go into immediate effect. Such emergency laws upon a yea and nay vote must receive the vote of two-thirds of all the members elected to each branch of the general assembly, and the reasons for such necessity shall be set forth in one section of the law, which section shall be passed only upon a yea and nay vote, upon a separate roll call thereon. The laws mentioned in this section shall not be subject to the referendum.

Sec. 1e. The powers defined herein as the "initiative" and "referendum" shall not be used to pass a law authorizing any classification of property for the purpose of levying different rates of taxation thereon or of authorizing the levy of any single tax on land or

land values or land sites at a higher rate or by a different rule than is or may be applied to improvements thereon or to personal property.

Sec. 1f. The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.

Sec. 1g. Any initiative, supplementary or referendum petition may be presented in separate parts, but each part shall contain a full and correct copy of the title, and text of the law, section or item thereof sought to be referred, or the proposed law or proposed amendment to the constitution. Each signer of any initiative, supplementary or referendum petition must be an elector of the State and shall place on such petition after his name the date of signing and his place of residence. A signer residing outside of a municipality shall state the township and county in which he resides. A resident of a municipality shall state in addition to the name of such municipality, the street and number, if any, of his residence and the ward and precinct in which the same is located. The names of all signers to such petitions shall be written in ink each signer for himself. To each part of such petition shall be attached the affidavit of the person soliciting the signatures to the same, which affidavit shall contain a statement of the number of signers of such part of such petition and shall state that each of the signatures attached to such part was made in the

presence of the affiant, that to the best of his knowledge and belief each signature on such part is the genuine signature of the person whose name it purports to be, that he believes the persons who have signed it to be electors, that they so signed said petition with knowledge of the contents thereof, that each signer signed the same on the date stated opposite his name; and no other affidavit thereto shall be required. The petition and signatures upon such petitions, so verified, shall be presumed to be in all respects sufficient, unless not later than forty days before the election, it shall be otherwise proved and in such event ten additional days shall be allowed for the filing of additional signatures to such petition. No law or amendment to the constitution submitted to the electors by initiative and supplementary petition and receiving an affirmative majority of the votes cast thereon, shall be held unconstitutional or void on account of the insufficiency of the petitions by which such submission of the same was procured; nor shall the rejection of any law submitted by referendum petition be held invalid for such insufficiency. Upon all initiative, supplementary and referendum petitions provided for in any of the sections of this article, it shall be necessary to file from each of one-half of the counties of the State, petitions bearing the signatures of not less than one-half of the designated percentage of the electors of such county. A true copy of all laws or proposed laws or proposed amendments to the constitution, together with an argument or explanation, or both for, and also an argument or

explanation, or both, against the same, shall be prepared. The person or persons who prepare the argument or explanation, or both, against any law, section or item, submitted to the electors by referendum petition, may be named in such petition and the persons who prepare the argument or explanation, or both, for any proposed law or proposed amendment to the constitution may be named in the petition proposing the same. The person or persons, who prepare the argument or explanation, or both, for the law, section or item, submitted to the electors by referendum petition, or against any proposed law submitted by supplementary petition, shall be named by the general assembly, if in session, and if not in session then by the governor. The secretary of state shall cause to be printed the law, or proposed law, or proposed amendment to the constitution, together with the arguments and explanations, not exceeding a total of three hundred words for each, and also the arguments and explanations, not exceeding a total of three hundred words against each, and shall mail, or otherwise distribute, a copy of such law, or proposed law, or proposed amendment to the constitution, together with such arguments and explanations, for and against the same, to each of the electors of the State, as far as may be reasonably possible. Unless otherwise provided for by law, the secretary of state shall cause to be placed upon the ballots, the title of any such law, or proposed law or proposed amendment to the constitution, to be submitted. He shall also cause the ballots so to be printed as to permit an affirmative or

negative vote upon each law, section of law, or item in a law appropriating money, or proposed law or proposed amendment to the constitution. The style of all laws submitted by initiative and supplementary petition shall be: "Be it Enacted by the People of the State of Ohio," and of all constitutional amendments: "Be It Resolved by the People of the State of Ohio." The basis upon which the required number of petitioners in any case shall be determined shall be the total number of votes cast for the office of governor at the last preceding election therefor. The foregoing provisions of this section shall be self-executing, except as herein otherwise provided. Laws may be passed to facilitate their operation, but in no way limiting or restricting either such provision or the powers herein reserved.

## Proposed Amendment to Wisconsin Constitution

(No. 36, A.)

Joint Resolution No. 74

(Defeated by the People, November 3, 1914.)

To amend section 1 of article IV of the constitution, to give to the people the power to propose laws and to enact or reject the same at the polls, and to approve or reject at the polls any act of the legislature; and to create section 3, of article XII of the constitution, providing for the submission of amendments to the constitution upon the petition of the people.

Resolved by the Assembly, the Senate concurring, That section 1 of Article IV of the constitution be amended to read:

Section 1. I. The legislative power shall be vested in a senate and assembly, but the people reserve to themselves power, as herein provided, to propose laws and to enact or reject the same at the polls, independent of the legislature, and to approve or reject at the polls any law or any part of any law enacted by the legislature. The limitations expressed in the constitution on the power of the legislature to enact laws, shall be deemed limitations on the power of the people to enact laws.

2. a. Any senator or member of the assembly may introduce, by presenting to the chief clerk in the house of which he is a member, in open session, at any time during the session of the legislature, any bill or any amendment to any such bill; provided that the time for so introducing a bill may be limited by rule to not less than thirty legislative days.

b. The chief clerk shall make a record of such bill and every amendment offered thereto and have the same printed.

3. A proposed law shall be recited in full in the petition, and shall consist of a bill which has been introduced in the legislature during the first thirty legislative days of the session, as so introduced; or, at the option of the petitioners, there may be incorporated in said bill any amendment or amendments introduced in the legislature. Such bill and amendments shall be referred to by number in the petition.

Upon petition filed not later than four months before the next general election, such proposed law shall be submitted to a vote of the people, and shall become a law if it is approved by a majority of the electors voting thereon, and shall take effect and be in force from and after thirty days after the election at which it is approved.

4. a. No law enacted by the legislature, except an emergency law, shall take effect before ninety days after its passage and publication. If within said ninety days, there shall have been filed a petition to submit to a vote of the people such law or any part thereof, such law or such part thereof, shall not take effect until thirty days after its approval by a majority of the qualified electors voting thereon.

b. An emergency law shall remain in force, notwithstanding such petition, but shall stand repealed thirty days after being rejected by a majority of the qualified electors voting thereon.

c. An emergency law shall be any law declared by the legislature to be necessary for any immediate purpose by a two-thirds vote of the members of each house voting thereon, entered on their journals by the yeas and nays. No law making any appropriation for maintaining the State government, or maintaining or aiding any public institution, not exceeding the next previous appropriation for the same purpose, shall be subject to rejection or repeal under this section. The increase in any such appropriation shall only take effect as in case of other laws, and such increase, or any part thereof specified in the petition,

may be referred to a vote of the people upon petition.

5. If measures which conflict with each other in any of their essential provisions are submitted at the same election, only the measure receiving the highest number of votes shall stand as the enactment of the people.

6. The petition shall be filed with the secretary of state and shall be sufficient to require the submission by him of a measure to the people when signed by eight per cent of the qualified electors calculated upon the whole number of votes cast for governor at the last preceding election, of whom not more than one-half shall be residents of any one county.

7. The vote upon measures referred to the people shall be taken at the next election occurring not less than four months after the filing of the petition, and held generally throughout the State pursuant to law or specially called by the governor.

8. The legislature shall provide for furnishing electors the text of all measures to be voted upon by the people.

9. Except that measures specifically affecting a subdivision of the State may be submitted to the people of that subdivision, the legislature shall submit measures to the people only as required by the Constitution.

* * * * * * *

Section 3. 1. a. Any senator or member of the assembly may introduce, by presenting to the chief clerk in the house in which he is a member, or in open session, at any time during any session of the

legislature, any proposed amendment to the constitution or any amendment to any such proposed amendment to the constitution; provided, that the time for so introducing a proposed amendment to the constitution may be limited by rule to not less than thirty legislative days.

b. The chief clerk shall make a record of such proposed amendments to the constitution and any amendment thereto and have same printed.

2. Any proposed amendment to the constitution shall be recited in full in the petition and shall consist of an amendment which has been introduced in the legislature during the first thirty legislative days, as so introduced, or, at the option of the petitioners, there may be incorporated therein, any amendment or amendments thereto introduced in the legislature. Such amendment to the constitution and amendments thereto shall be referred to by number in the petition. Upon petition filed not later than four months before the next general election, such proposed amendment shall be submitted to the people.

3. The petition shall be filed with the secretary of state and shall be sufficient to require the submission by him of a proposed amendment to the constitution to the people when signed by ten per cent of the qualified electors of whom not more than one-half shall be residents of any one county.

4. Any proposed amendment or amendments to this constitution, agreed to by a majority of the members elected to each of the two houses of the legislature, shall be entered on their journals with the yeas and

nays taken thereon, and be submitted to the people by the secretary of state upon petition filed with him signed by five per cent of the qualified electors of whom not more than one-half shall be residents of any one county.

5. The legislature shall provide for furnishing the electors the text of all amendments to the constitution to be voted upon by the people.

6. If the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the constitution from and after the election at which approved; provided, that if more than one amendment be submitted they shall be submitted in such manner that the people may vote for or against such amendments separately.

7. If proposed amendments to the constitution which conflict with each other in any of their essential provisions are submitted at the same election, only the proposed amendment receiving the highest number of votes shall become a part of the constitution.